C.S.

SECRET.

No. S/34/40.

1940

S. of S. Secret despatch

1940

15th April.

Previous Paper.

SUBJECT.

ACTIVITIES OF MR. E. J. HAMM, TRAVELLING TEACHER IN THE FALKLAND ISLANDS.

MINUTES.

1. S. of S. Secret despatch of 15th April, 1940.

Y.E. Order under Def. Reg. 17 (1A) for your signature, please.

29/5/40

2. Detention Order of 29/5/40

3. Copy of Instructions to Sgt. D. O'Sullivan, 30/5/40

4 Police found outside residence of Mr. Reid.

5. Memo from O.C. Defence Force

6. 7 Report from Sgt. D. O'Sullivan, 7/6/40

8. Letter from O.C. Defence Force, 7/6/40

9-15. Letter from Mr. E. J. Hamm.

16. Particulars of E. J. Hamm, 8/6/40

17 Report of Advisory Committee, 11/6/40.

Subsequent Paper.

Y/E.,

Action was taken under your order of May 29th (2) and the man Hamm was brought in on Sunday, June 2nd. He was informed of his rights in accordance with Regulation 17 of the Defence Regulations and wrote a letter asking for his case to be considered. This was undated but was received on June 4th (15).

The Advisory Committee met on the 11th, Hamm being present. He was willing to give any explanation required and expressed a desire to do all he could to clarify his position and to show he was not in any way acting against what he considered the best interests of his country.

At the outset, having been confronted with his own letter (exhibit H), he wished to withdraw that part of his appeal letter (15 above quoted) which was to the effect that he was no longer an "active member" of the British Union of Fascists.

The Committee then considered the evidence of Hamm's association with that subversive body. This they decided was conclusive, and their decision was arrived at after the examination of all the documents attached, an explanation at no point being refused by Hamm.

Since his detention Hamm has persisted in his adulation of Mosley, hanging in his cabin a photo of that individual in such a manner as to make his guard protest and also being in his conversation so pro-Nazi that he has actually annoyed his fellow detainees.

Public feeling is very strong against Hamm and he could not with safety to himself be released.

The whole story as revealed in the documents attached is a sordid one, cheap and silly were it not for the known results of such activities. Just such cliques, as the one Hamm belongs to, were responsible for the subversive activities in other countries that brought about the so-called Fifth Column movements.

I would suggest Y/E approve the findings of the Advisory Committee and that the Secretary of State be informed that his detention having been made necessary and his known connection as an active Fascist being common to the whole community, it is undesirable that he should remain in the Colony, and that Y/E has decided as much in his own interest as for other reasons to keep him under detention until a passage home can be arranged, when Y/E would terminate his agreement under Section 7 (1) of his agreement (2) in File P/232 attached.

C.S.O. No. S/34/40.

Inside Minute Paper.

Sheet No. 2.

If you think it necessary an order could be made to deport him under the Defence Regulations - but I do not submit this.

At the same time, I would suggest that all the documents be forwarded to Scotland Yard as some of the entries, especially in the address book, may interest them, as well as the letter from E. Cross and H. J. Hobbend.

If you concur, I will have the despatches drafted.

[signature]
Colonial Secretary,
20. 6. 40.

He wd. probably do less harm here than anywhere else. Please speak with this

[signature] 21/6/40

Y.E. Despatch in draft form submitted for your approval.

This man I am informed persists in carrying on "Fascist" propaganda to the annoyance of the [illegible] in spite of statements in (23-18)

I attach a letter addressed to [illegible] in this last mail for your information. The insidiousness of this stuff is [illegible]

[signature] 19/11/40

Draft desp. app! The [illegible] in which [illegible]'s letter was posted ohd. be put on it. Action Newslewise seems fairly sound. [illegible] at first merely was not to throw his weight [illegible] new Government

[signature] 19/[illegible]

under CR 66

Formal proceedings for dismissal as from the date of the report by the Advisory Committee should surely be taken? or is dismissal effected solely under Clause 6 of the agreement and by simple order? The date will be 11 June and S of S informed.

[signature] 19/7/40

Despatch to S. of S. Secret of 20/7/40. 24-37

Y.E.
Despatch herewith for your signature. Dismissal under the Agreement is also [illegible] necessary.

[signature] 22/VII/40

Very well

[signature] 22/7

B.V. 1.VIII.40

Copy of letter to Mr. Hamm, undated. 38

P.A.

Letter to Mr. E. J. Hamm, 3/8/40. 39.
" from " 16/8/40. 40-46
Letter to Mr. E. J. Hamm, 20/8/40. 47.
[illegible] from O.C. Defence Force, 23/8/40. 48-52.
[illegible] from Mr. E. J. Hamm. 3/9/40 53-54

Y.E. 53-54 were addressed to you through O.C. Def. F. & require no comment I think from you or me. As this man will probably persist in writing & bothering you, I will, subject to your consent, not forward the communications in future.

[signature] 9/IX/40

Letters from him containing an appeal should be submitted to

C.S.O. No. S/34/40

Inside Minute Paper.

Sheet No. 3

me. He refers to (54) please
inform him that I have considered
his application for his release
or for trial by some tribunal
other than that provided by the
law and I am unable to grant
his request.

I notice that he complains
very much of the cold owing to
insufficient warming of his quarters
and that he is suffering physically.
The internees quarters must
be properly warmed and a medical
officer should visit and examine
him at an early date

11/9/40

A.C.S. Draft letter as above for my signature, please

Letter to Mr. E. J. Harris, 10/9/40.

55.

O.C. Def 7. Please see H.E's minute above. 10/IX/40

Honourable Colonial Secretary.

His Excellency would like Thankyou. I am discussing this question in audience tomorrow

O.C. Def 11.IX.40.

O.C. Def 7. I showed the S.M.O. H.E's minute 7 days & he will in due course see you about visiting the "Flemish". 13/IX/40

Honourable Colonial Secretary.

In accordance with His Excellency's instructions of last Friday steps are being made to take & transfer the two internees ashore. The S.M.O. and Kenyon Evans almost Superfluous.

O.C. Def. 16.IX.40.

Y/E.

E.E's minute of 16/9/40 submitted for confirmation.

C.S.
[illegible]
19/9/40.

O.C. recommended on grounds of economy and conditions of internees removal to Rock Cottage. I app. subject to return to [illegible] being practicable at any time. Internees should be warned that they will be put back if any trouble is occasioned. Visit of [illegible] not essential. ~~[illegible]~~

[illegible] 19/9/40

O.C. [illegible] Please see & note [illegible] 20/10/40

Honourable Colonial Secretary. His Excellency's commands noted & communicated to Internees. They have moved ashore today.

[illegible] O.C. D.F. 23.10.40. [illegible]

Cuttings from the Times of 23/8/40. 56-57

Order of re detention of E.J. Hamm 58.

" of rescinding Order of 29/5/40. 59.

Cuttings from the Times of 16/9/40 & 3/10/40. 60-61.

Telegram from High Commissioner, S. Africa, 7/1/41. 62.

Copy of Order by the Governor, 26/10/40. 63

" " " " " " 24/10/40. 64.

Y.E. Draft of a reply submitted (62) & orders for your signature, please [illegible] 9/1/41

C.S.O. No. S/384/40

Inside Minute Paper. *Sheet No. 4*

H.E.

65. With copy of telegram sent.
2. There is no such denial
of justice as might appear from
the second para. of your despatch
despatch the para. 3 of my telegram.
No writ of habeas corpus or
has been entertained but was
by reason of the incapacity of
the judge. I could probably have
appointed another judge under the
Law but there have been
cases in my own knowledge where
a Chief Justice has tried a
case relating to an Order he
has made as acting Governor
and has given judgment
that Order. Also I c
pass on it on appeal from the
own judgments in a lower c
For guidance only.

20/1/41

66. S. of S. telegram No. 11 of 16/1/41
67. Telegram to S. of S. of 16/1/41
68-69 Telegram to S. of S. No. 10 of 20/1/41.

Extract from the Times of 23/6/40 70
Extract from Hansard Vol. 10. 71
S. of S. telegram of 22 January, 1941. 72.
Memo from O.C. Defence Force, 25/1/41. 73-81.
Telegram from High Com. South Africa, 28/1/41. 82.
S. of S. Secret telegram No. 32 of 16/3/41. 83.

Y/E

Submitted.
? Red (31) in Mat. 5/7/39 to be repealed as in Red (56) of original draft Defence (amendment) Regulations, 1941.

J.J.
C. for C.S.
17/3/41.

If the reg. is altra vires in which case it would be subject as per the U.K. one

18/3/41

action taken in Mat. 5/7/39.

C.S.
18/3/41

Telegram No. 81 from S. of S. of 18/7/41. (84.)

Major the Hon.
J. Waddelow,
With reference to the final paragraph of Red. 84 can you please help us in the matter of the school children subject?

J.J. C.S.
C.S. for 31/7/41.

Honourable Colonial Secretary.

To the best of my memory this point was not considered by or reported upon by the Committee. They knew of course & they also saw reds (6) & (7) but they did not accept it as evidence or include it in their findings.

I. VIII. 41

C.S.O. No. 9/344/200

Inside Minute Paper. Sheet No. 5

85. Telegram to S. of S. No. 92 of 21/7/41.

Y/C.

Draft despatch submitted for approval.

C. J. Field. 19/8/41.

86. Telegram from S. of S. No. 94 of 26/8/41

87-90. Secret Despatch -ic S. of S. of 4/9/41.

91. Law Report, June 26th, 1941.

92. Law Report, July, 2nd, 1941.

93-98. S. of S. despo. No. 43 of 5/9/41.

Y/C.,

Submitted. I cannot see that any action is called for.

C. J. Field. 24/11/41 p.d.

99. Law Report, Sept. 18th 19th + 22nd Sept. 1941.

100. Law Report, Sept. 23rd, 24th + 25th Sept. 1941.

101 Law Report, Nov. 3rd 1941.

102. Law Report. Nov. 4th 1941.

Legal advisers,

For your information.

C. J. Field. 24/1/42.

H. B. T.

Thank you - I have read the entire file with much interest. I am also found that there is another cutting from the Daily Telegraph to be filed which I should much like to see.

4-2-42. R.B. L.R.

Cutting from Daily Telegraph of 4/11/41. 103.

Legal adviser

Herewith.

O. [illegible]

5/2/42.

H. O. S.

Thank you again.

5/2/42.

[illegible] L.A.

British Union of Fascists. 104.

News paper Cutting ("Times") of 15. 3. 46. 105

FALKLAND ISLANDS.

SECRET.

Downing Street,

15 April, 1940.

Sir,

I have the honour to inform you I have received information that Mr. Edward Jeffery Hamm, recently appointed as a travelling teacher in the Falkland Islands, has been a keen member of the British Union of Fascists and is stated to have said that he intended to further the movement in the Falkland Islands.

2. I forward this information in order that you may, if you consider it advisable, arrange for a watch to be kept on Mr. Hamm's activities.

I have the honour to be,

Sir,

Your most obedient,

humble servant,

(Sgd.) MALCOLM MacDONALD

GOVERNOR

SIR HERBERT HENNIKER HEATON, K.C.M.G.,

etc., etc., etc.

(2)

FALKLAND ISLANDS DEFENCE REGULATIONS.

DETENTION ORDER.

Governor.

In exercise of the powers conferred on him by Regulation 17 (1A) of the Falkland Islands Defence Regulations, 1939, His Excellency the Governor is pleased to order and it is hereby ordered as follows :-

1. That the person whose name is set out below shall be detained until this Order is rescinded or otherwise varied :-

EDWARD JEFFREY HAMM.

2. That the said person shall be detained under the command and control of the Officer Commanding the Falkland Islands Defence Force.

By Command,

Colonial Secretary.

Stanley,
29th May, 1940.
M.P. 176/39.

(3)

HEADQUARTERS
FALKLAND ISLANDS DEFENCE FORCE
STANLEY

30th. May 1940.

To

Sergeant D. O'Sullivan
Stanley.

1. You will proceed, with Sergeant Bonner, on Saturday the 31st. instant to Teal Inlet in order to effect the detention of the person named on the attached order and escort him to Stanley and hand him over to me. The attached order is your authority for this.

2. On arrival at Teal Inlet you will order Sergeant Rumbold to render you such assistance as you may require.

3. Should the person named not be at this Station, you will ascertain his whereabouts and proceed there, with Sergeant Rumbold should you wish.

4. The person named on the order must after being told of his detention and the order read to him on no account have access to any of his personal effects or papers other than such as are necessary of the former for his trip into Stanley. You will personally pack all such personal effects and papers and bring them to Stanley and hand them to me.

5. Any resistance to his detention must be dealt with by force.

6. You will on your return submit a written report on any information that you may obtain as to the person named's subversive activities in that part of the Colony where he has been employed.

7. You are hereby forbidden to communicate to anyone either before you leave or after you return either the reason for your journey or anything or matter connected therewith.

8. The attached general authority is for your use as need may be.

Major.
O.C. Defence Force

Copy to
His Excellency the Governor
The Colonial Secretary.

TO THE SPY
"RICE" & "HAM"


HOME OF THE
NAZI SPIES
SHOOT THEM THE
BUGERS
GERMAN DOGS
THE BASTARDS
TWO SPIES
RICE
AND
AMN

(5)

Honorable Colonial Secretary

While I agree entirely with the sentiment its method of expression is too coarse for the full appreciation of my aesthetic soul.

OW.

7. 6. 40.

Report.

Sir.

On being called upon for special duty, I found, that I was required to proceed to the camp, to detain and bring into Stanley one, Edward Jeffrey Hamm.

Proceeding on my journey, on the afternoon of 31/5/40. with Sergeant Barnes as guide, ending the first stage of my journey at the "Estancia",

There I am informed that the above named is at present at San Carlos, to get there I must pass through, Malo, Seal Inlet, Bombilla, Third Coiall, Velde, San Carlos, on arriving at San Carlos I am informed that the above named is at the Head of Bay.

Proceeding there on monday 3/6/40, I immediately arrest, Edward Jeffrey Hamm. at 08,45 on the same morning, on personally packing his personal effects.

I immediately commence my return journey to Stanley. via the above mentioned stages.

In general conversation with Mr J. Bonner of San Carlos. I bring the conversation round as to the activities and conversations of my prisoner. and he informed me, that he had not entered into any political conversation with the above named, as he had been

already warned not to do so, by Mr Cameron of Port San. Carlos, who had assured him & Mr J. Bonner that the person at this moment detained, had all the answers at his finger tips.

Proceeding on my journey to Stanley, I find that the people of the camp are not surprised that the man in question has been detained, they are of the opinion, that he does not care to listen to the English news, but will listen to the American and German news.

One man on the outward journey, inquiring as to why we were out, was told that we were out to arrange for the training camp, Oh he said, I thought you might be out to arrest the school master. he does not seem to like to listen to English news,

To conclude my report, that seems to be the general opinion of the men in camp, on arriving in Stanley on the 6/6/40. I hand the detained person over to the Commanding Officer, Major Woodgate at 13.40. of the same date.

I Am. Sir.

Your Obedient Servant
Sergt. D.W. Sullivan.

Major
Woodgate
Officer Commanding
Falkland Island Defence Force.

Honourable Colonial Secretary

Attached letter removed from parcel (which contained 1 pullover) is handed to you with others.

[illegible]. 17. vi. 40

(15)

His Excellency The Governor.
Government House.
Stanley.

Your Excellency,

I humbly submit the following facts for your consideration, and pray that after you have examined them you will deem it possible to rescind the order for my detention.

I understand that I have been detained under a recent order, under which members of certain organisations may be detained.

I joined the British Union of Fascists and National Socialists in March 1935 as a non-active member. By the constitution and rules of that organisation, membership automatically ceases if a member does not pay any subscriptions for a period of at least two months. I have not contributed anything, directly or indirectly,

British Union funds since December last (14)
and do not possess a current membership
card. Therefore, if the section under which
I am detained is directed only against
actual members of the movement, I would
humbly ask your Excellency to say that I
am exempt from its provision, and to grant
me my discharge.

In addition to this legal
point I would humbly draw your Excellency's
attention to the following facts. My activities
in England never brought me into conflict with
the authorities, or with my employers. For the
past 2½ years I have been an assistant
master on the staff of a private ~~secondary~~
school — The King's School, Harrow, Middlesex.
My British Union activities were confined to
secretarial work, and, as far as I am aware,
my membership was not known to the
general public. Your Excellency will appreciate
that if my activities had been of an
objectionable nature, my dismissal from the

staff of a school dependant upon public confidence would have been inevitable. On the contrary, I left voluntarily, and was supplied by the Headmaster with a reference which satisfied the Crown Agents for the Colonies as to my suitability for the post of Travelling Teacher in the Falkland Islands. The Headmaster (a priest in Holy Orders, and a man of absolute integrity) was fully aware of my political views, to which he was violently opposed. Nevertheless, he showed his confidence in me in retaining me on his staff for the period I have mentioned. He showed his confidence in my integrity finally by providing me with the hospitality of his home from the end of term on December 19th. until I left England on Jan. 8th.

Recent news bulletins from England appear to suggest that British Union is regarded as a subversive movement under German influence. I would humbly ask your Excellency to believe that if this is so I was entirely

norant of the fact. I joined British Union
in the belief that it was a patriotic movement
whose policy might be summed up in its
admirable motto of "Britain First." In that
belief I devoted my spare-time energies to
the propagation of British Union policy, which
I considered to be essentially British in its
every point, and hoped that the movement
would eventually win the constitutional
support of the British electorate. I always
denied most vehemently any suggestion that
the movement was under the influence of
Germany or of any country, and I humbly
ask your Excellency to believe that I would
have severed my connections with the
movement immediately if I had discovered
such an allegation to be true.

I would now humbly
draw your Excellency's attention to the
period during which I have been engaged
as a Travelling Teacher in the Falkland
Islands. I would humbly ask your Excellency
to believe that I have endeavoured to

carry out my duties faithfully and conscientiously, and to the best of my ability. I have never committed any illegal act, or done anything likely to prejudice the interests of His Majesty's Government. As I have already stated that my political activities in England had as their object the winning of some subsequent election for British Union your Excellency will appreciate that I would not have come to the Falkland Islands if I were anxious to continue such activities.

I appreciate that the question of my release or continued detention must be decided by considerations of public policy, and that personal sentiments cannot affect the issue. However, I humbly venture to lay the personal side of my case before your Excellency. My decision to apply for the post of Travelling Teacher in the Falkland Islands rested upon my anxiety to secure

more remunerative post than the one I
held in England, in order to save sufficient
money to marry. I became engaged three
days before I left England, and have
invested the larger part of my salary
each month in a determined effort to
save sufficient to make this cherished
ambition possible of realisation. My detention
will, of course, make it necessary for me to
release my fiancée from the engagement, an
action which would cause me intense
unhappiness.

I humbly beg your
Excellency to give my case your consideration,
and pray that you will deem it possible
to rescind the order for my detention. If
your Excellency should reach such a
decision, it is my dearest wish that I
might be allowed to resume my duties as
a travelling teacher. I have become
keenly interested in my work, and enjoyed

very feature of "camp" life. If this is not possible, I humbly beg that I may be allowed to offer my services to the Director of Education as a teacher in Government School. If neither is possible, I humbly ask your Excellency to accept my services in any other department where I may demonstrate my integrity and anxiety to serve the Government. I would naturally expect to be subject to certain restrictions, and would willingly obey any rules your Excellency might lay down.

That is my case, which I humbly submit to your Excellency, and humbly prey that it may receive your favourable consideration.

I am,

Sir,

your obedient servant,

E. J. Hamm.

Surname.	Christian names	PART I	Nationality	Sex	Age	Serial No.
HAMM	Edward Jeffery		British	Male	24	

Date of Birth.	Place of Birth (Town or Village, Administrative District and State)
15th September, 1915.	Ebbw Vale, Mon., England.

Address prior to Internment

San Carlos, East Falkland.

Name and address of next of Kin

Mrs G. Hamm, 16 Bryn Wern, Pontypool, Mon, England.

Occupation (if Seaman, state name of last ship)	Where taken into custody and Date. (If removed from ship, name of ship to be given)
Travelling Teacher.	San Carlos. 3rd June, 1940.

Date and place of Internment

Stanley, Falkland Islands. 6th June, 1940.

It is requested that this space may be left blank for the P.W.I.B. London

P.T.O.

(16)

PART II

Medical Report and state of health

Man is in good health and of sound physique. He requires dental treatment. He is suffering from abrasions of face and inging to the nose, caused by a fall from a horse.

Signature of Medical Officer D.K. Cowan.

PART III Articles impounded on Internment (Cash, notebooks, letters, valuables, knives etc. to be recorded hereon)

Two £5/- F.S. Notes. Pocket book, diary addressbook letters.

I certify that particulars in Part III are correct.

Signature of Internee E. J. Hamm Date 8th June, 1940 Signature Austin Woodfall

(Custodian of Enemy Property in O.C. Camp)

(17)

FALKLAND ISLANDS.

STANLEY,

11th June, 1940.

We, having examined E. J. Hamm personally as well as his papers, and in view of the known activities of the man here, advise His Excellency that the best steps to be taken with him are that he be detained until he can be deported to England and that his contract be cancelled in accordance with his agreement.

Chairman

G.I.P.N.

Members

Advisory Committee.

Major.

"Fennia."
Stanley.
15-7-40.

(23)

The Colonial Secretary.
Stanley.

Rec'd. 17/7/40

Sir,

I respectfully submit the following for your consideration.

When my appeal against my detention was referred to you I elected to answer any questions you might ask me, and endeavoured to answer those questions to the best of my ability. I feel, however, that I have not made my position as clear as I desire, and I therefore submit this additional statement.

As I am waiving the technical defence that my membership of British Union

has expired, I would respectfully draw your attention to what membership of British Union implies, according to my own interpretation of it. I joined British Union in March 1935, attracted by its declared intention of winning political power by the constitutional vote of the people, in order to carry into effect its political and economic policy, which appeared to me to be admirably suited to the problems and interests of Britain. This policy was propagated at approximately a thousand meetings a week throughout Britain, in a weekly newspaper, and in a number of ~~books~~ and pamphlets either sold or distributed free

to the general public. The National and District Headquarters were publicly advertised, and open to any member of the public who had lawful business to transact there. In view of these facts, and because the membership of British Union included well-known and respected figures in British public life, I had no hesitation in associating myself with such a movement. If I had any reason to suppose that the movement was financed from abroad, or engaged in any subversive or unpatriotic activities, I should resign immediately. However,

although such charges were frequently made by our political opponents, they were invariably disproved to the satisfaction of the British people, who continued to join British Union. My own activities, for professional reasons, were confined to non-active duties. I have already referred, in my appeal to his Excellency, to my relations with my last employer in England, and I am confident that reference to him, or to anyone else who knew me, would reveal nothing detrimental to me.

You did not appear, sir, to accept my explanation of my decision to apply for a post in the

(21)

Falkland Islands, and appeared to assume that it was connected with political activities. Your reasons appeared to be:

1. I did not become engaged to my fiancée until after my appointment, although I had known her for some eighteen months.

2. I had abandoned a course of study for an External B.A. degree of London University.

3. It was the alleged custom of British Union to establish political "cells" in areas where there were no members of the movement.

My answers to these points are:

1. It was absurd for me to become engaged on my salary in England (£80 per annum resident), but quite feasible for me to marry after three years in the Falklands on a salary of £150 per annum resident. I therefore applied for the post, and when I was appointed, became engaged as soon as it was possible for me to make such necessary arrangements as securing the consent of my fiancée's parents, and purchasing an engagement ring.

2. On two occasions I had passed my Intermediate Arts Examination in Latin, History, and English, but had failed in French. I had decided to

continue studying with a view to a third attempt. This would have necessitated a further year's study, and if successful at least two years more before I could have sat for my finals. In view of the fact that the outbreak of war interrupted even this dubious plan, I considered my appointment to the Falkland Islands an excellent opportunity to further my career.

3. I deny categorically that my decision to apply for a post in the Falkland Islands was in any way connected with political activities. British Union seeks to win power by the constitutional vote of the people at a

General Election in England. If I had remained in England I should have been able to play some small part in attaining this object. I find it impossible to imagine in what manner political propaganda in a distant colony governed by his Excellency, could affect the issue.

With reference to my address book, it might prove of assistance to you if I gave you the fullest possible information concerning the Dutch girl Bertha Popping, and the German girl Gertrud Seitz. Since my schooldays I have been interested in foreign correspondence as an aid to

(19)

the study of languages. While at school I corresponded with a French boy and girl, and with a Corsican girl. About five years ago I replied to a newspaper advertisement by the Dutch Bertha Popping, who wished to correspond with an Englishman. Owing to the large number of replies she received she wrote to me once or twice, and then passed on my address to her German friend Gertrud Fritz, who began to correspond with me. At her invitation in August 1937 I spent a month's holiday at her home in Heidelberg. My holiday was privately arranged, and I paid

my own expenses. It was in no way connected with any British or German organisation. Neither then, or at any time, have I met or corresponded with any person holding any official or semi-official position in Germany or in any other country.

I apologise for the length of this statement, but I have endeavoured to lay before you all the information I believe to be relevent. I am anxious to answer any other questions you, sir, may deem fit.

I respectfully ask you, sir, to consider it expedient to advise his Excellency to order my release.

Thanking you in anticipation,

I am,

Sir,

Yours respectfully,

E. J. Hamm.

(37)

FALKLAND ISLANDS.

SECRET.

GOVERNMENT HOUSE,
STANLEY,
20th July, 1940.

My Lord,

I have the honour to acknowledge the receipt of Mr. Secretary MacDonald's Secret despatch of the 15th of April, on the subject of Mr. Edward Jeffery Hamm, and at the same time to refer to your Secret Circular Telegram, No. 72 of the 28th of May, 1940, regarding the amendment of the Defence (General) Regulations, 1939.

2. Action was taken in connection with the latter under a local Defence Regulation, No. 17 (1A) issued in the terms of the telegram referred to. As a result of this regulation and the information conveyed in Mr. Secretary MacDonald's despatch together with local reports concerning Mr. Hamm's activities here, I ordered his detention.

3. The Order for Mr. Hamm's detention was issued on the 29th of May, 1940, but he was absent from Stanley carrying out his duties as a Travelling Teacher in one of the Camp districts, and it was not until the 6th of June that he was brought into Stanley.

4. He has exercised his right to ask for an interview before the Advisory Committee in accordance with Regulation, No. 17 (3).

5. That Committee consists of the Colonial Secretary, as Chairman, the Naval Officer in Charge, and the Officer Commanding the Falkland Islands Defence Force.

6. The Committee reported as follows :-

"We, having examined E. J. Hamm
"personally as well as his papers, and in

view/

THE RIGHT HONOURABLE
LORD LLOYD, G.C.S.I., ETC.,
SECRETARY OF STATE FOR THE COLONIES.

(36)

"view of the known activities of the man here, "advise His Excellency that the best steps to "be taken with him are that he be detained "until he can be deported to England and that "his contract be cancelled in accordance with "his agreement."

7. I do not propose for the moment to deport Mr. Hamm as suggested, as, in my opinion it would be safer to detain him here and not send him at this juncture to Great Britain where his activities might be more dangerous than in this Colony.

8. I enclose for the possible use by the Police authorities the following documents found in the possession of Mr. Hamm and I would ask you to give them into the custody of Scotland Yard.-

EXHIBITS "A" TO "H".

EXHIBIT "A".	A Pocket Diary, 1940.
EXHIBIT "B".	An Address Book.
EXHIBIT "C".	British Union Membership Card completed to 1939.
EXHIBIT "D".	A sheet of note-paper containing information regarding the dedication of a book to Oswald Mosley.
EXHIBIT "E".	Omnibus letter, undated.
EXHIBIT "F".	Extract from letter from Miss Doris Wilkin.
EXHIBIT "G".	Letter from 213, Lyon Park Avenue, Wembley, dated 4th March, 1940.
EXHIBIT "H".	Letter to H. J. Hibberd, dated 26th May, 1940.

I have the honour to be,

My Lord,

Your Lordship's most obedient, humble servant,

(SGD.) H. HENNIKER HEATON.

(35)

EXHIBIT "A".

A Pocket Diary, 1940, issued for the British Union from which the only entries of an unusual character are as follows. Hamm's explanations as noted by the Committee are also given.

Entries.

1st February. Meet men from "Graf Spee".

Hamm's explanation is that he met them in a restaurant. They did not speak. He knew they were off the "Graf Spee" because they were in uniform.

12th February. See part of Football Match between "Alcantara" and a supply ship. A chat with a sailor. (Latter a curious entry as the diary is made up almost entirely of routine entries.)

Hamm states that this entry was made because the sailor was apparently under the influence of alcohol.

21st March. Hear American version of Sylt.

Hamm states that the entry 'just happened.'

8th April. The fateful 8th passes with nothing more eventful than McCallum shaving off his moustache.

The fateful "8th" merely records a series of coincidences which occurred on the "8th".

15th April. The Shorts of Douglas Station arise.

"arise" = "arrive".

23rd May. Hear that the Leader and others have been arrested. HAIL MOSLEY !

Just affection and sympathy with Mosley.

At the end of the Diary the following letters and figures which appear to be a Code are written thus :

2 3 4 A 5 6 7 8 K 9 10 J Q
5 Q 7 9 J 7 8 3
8 5 4 3 8 10
6
3 2

5,Q,7,A,8,3,9,J,K,4,2,6,10.

So-called Code = Card-trick by which one can produce cards as spelt. This is true and the Committee was aware of this before Hamm was examined.

(34)

EXHIBIT "B".

An Address Book.

Entries.

Baker A. E. Jr.,
Buckley Works,
Buckley Rd,
London, N.W. 6.

Cross, Miss E.
1, St. Mathew's Rd,
Pontypool.

A. C. Baker is a Printer who prints for the British Union.

Miss E. Cross - vide letter marked (1). Hamm says she uses expressions he would not use himself.

Cross, Miss M.
9a, Southview Avenue,
Dudden Hill, N.W.10.

Fritz, G. Fraulein,
Heidelberg,
Zahringerstrasse 32,
Deutschland.

Miss M. Cross - Mabel and not referred to as May.

Fraulein Fritz of Heidelberg - Hamm was in correspondence as "pen-friend" with Bertha Popping, q.v., who having too many such friends, gave an alternative girl's address. Popping had 76 friends and so had to cut out some. Miss Fritz was an out-and-out Nazi and held some post. Hamm asked at Harrow Post Office after war broke out whether he could communicate a personal letter - but the eventual letter was returned opened by Censor. Can't remember whether he had put address outside, but thinks he did. This he thinks was in October.

Griffiths, J. R.
80, Edward St.,
Pontypool.

Hibbard, H. J.
213, Lyon Park Avenue,
Wembley.
20, Peterborough Rd,
Harrow,
Middlesex.

J. R. Griffiths - School friend - no connection with British Union.

H. J. Hibbard - action member, district organizer, Harrow, employed at Headquarters. About 38 years, unmarried. 20, Peterborough Rd, Harrow, is the British Union Office address (Letters (2) and (3)).

Henshaw, G. F. W.
42, Hafton Rd.,
Catford, S.E. 6.

Hayward, Hilda & Albert,
796, Rochester Way,
Falconwood Park,
Sidcup,
Kent.

G. F. W. Henshaw, - no connection - colleague at King's School, Harrow.

Albert and Mrs Hilda Hayward - not connected with British Union but relatives of Miss Doris Wilkin.

93

Jennings, D. B.
29, Anglesmede Crescent,
Pinner,
Middlesex.

Jones, R. Ivor,
West Mon. School,
Pontypool,
Mon.

D. B. Jennings - colleague - no connection with British Union.

R. I. Jones - headmaster of school where Hamm was educated.

Jones, Stanley, Rev.
St. John's,
Wainfelin,
Pontypool.

Jarvis, Mrs,
15, Bryn Wern,
Pontypool.

Mrs Jarvis - neighbour - not connected with British Union.

Rev. S. Jones - Hamm's Parson. " " "

Lewis, J. P.
Town School,
Pontypool,
Mon.

Leader, Mrs.
35, Warkworth St.,
Cambridge.

J. P. Lewis - old schoolmaster - not connected with British Union.

Mrs Leader - a Cambridge boarding-house keeper.

MacKay, K.
Windle Hill,
Neston, Wirral,
Cheshire.

Montgomery, W.
Bilbao 3846,
Montevideo,
Uruguay.

K. MacKay, - a former colleague - not connected with British Union.

Montgomery, W. - ? an old man.

Nullet, A. H.
Supt. St. John del Rly,
Co., Ltd,
Villa Nova de Lima,
Minas Geraes,
Brazil.

Norris, Mrs.
56, Victoria Rd,
Ebbw Vale.

A. H. Nullet - Hamm states this address was given him by an unknown American or Canadian-speaking man in the British Union bookshop as one who might give Hamm employment.

Mrs Norris - an old friend - not connected with British Union but her son Alfred is.

Parker, H. W. Rev.
143, Marlborough Hill,
Wealdstone,
Middlesex.

Palfrey, A. C.
Park Lodge,
Pontypool.

H. W. Parker - A former colleague - not connected with the British Union.

A. C. Palfrey - old school friend, not connected with British Union.

Popping, Bertha,
Oosterwalde, Friesland,
Nederland.

Rieple, J,
(no address given).

(32)

Bertha Popping - a pen-friend in Holland - no knowledge of her politics.

Rieple, J - ? lives at King's School, Harrow - not connected with British Union.

Rice, R.
12, Trafalgar Rd,
Wallesey,
Cheshire.

Salter, W.
101, The Hundred,
Romsey, Hants.

R. Rice - exchanged addresses at the interview at the Crown Agents when applying for the post.

W. Salter - former colleague, not connected with British Union.

Stockton, C. E.
9, Moorland Avenue,
Poulton-le-E(?F)ylde,
Blackpool,
Lancs.

Warner, L. A.
33, Sandgate Rd,
Folkstone,
Kent.

C. E. Stockton - former colleague, not connected with British Union.

L. A. Warner - " " " "

Wootton, C. J.
Westcott Green,
Dorking,
Surrey.

Waterton, Rev. F,
The King's School,
St. John's Rd,
Harrow.

C. J. Wootton - former colleague, not connected with British Union.

Rev. Waterton - former headmaster, not connected with British Union.

Wilkin, Len & Gladys,
367, Hurst Rd,
Albany Park,
Sidcup, Kent.

Wilkin, Bert & Floss,
50, Park Avenue South,
Hornsey, N. 8.

L. & G.
B. & F.
} Wilkin - -in-laws.

(1.)

1. St. Mathew's Rd,
Pontypool,

Thursday, April 4th.

Dear Jeff,

Thanks very much for your letter. I was very pleased to hear from you. I'm glad you had a good trip. It must be an experience to sail and live in the Southern Hemisphere. You'll have to set about converting the Falkland Islanders.

I'm sure you'll be thrilled to know that Pontypool is "full of Nazis". At least that is what a man went into Driscoll's shop and said. By "Nazis" he meant Blackshirts! Evidently sufficient literature has been distributed to make the locals think that. So you can judge - the Fascists are not going to seed.

Miss Mayes stayed with me for Easter and we went to Abergauenny and sold "Actions" and "British Peace" on Easter Tuesday morning - local market day. We sold 15 "Actions" and 7 B.P. which we thought wasn't too bad. If only someone could sell there every week a marvellous pitch could be worked up.

Miss Hayes spoke with Hugh Ross-Williamson in Poole, Dorset in February. The subject was of course peace. O.M. spoke there too in March. It was a grand meeting - packed out. They roped in 15-20 new members after. He is to speak at Winton, Bournemouth in May. Whitsun Sunday probably because during Whitsun week the Labour Party Conference is being held at the Pavilion there.

I'm going down for Whitsun. We are going to have a whale of a time, sell "Actions", foster parades, etc. And with the inspiration of a Leader's meeting to get us going!

This war is getting more boring than ever. Most people are dreadfully fed up with everything. Such as cars and no petrol. I bought myself a bicycle on Monday and I'm a bit stiff from learning to ride it. I pegged away on Tuesday and Wednesday evening and I can go now. Am hoping to use it to come to school through the summer months. Not to save money ! I'm not saving any, hardly seems worth it.

Pontypool is still in the same place - with the locals as wooden as ever. Forgot this - we have posters put up every week on the hoardings to advertise B.P. We have a three month contract. And they don't get defaced.

I suppose you have arranged to have an "Action" sent you every week. I'll send you a "Free Press" sometimes. If there is anything in it - usually there is not. It is just about as stupid now as the daily rags.

The "Daily Sketch", in its leader yesterday made an attack on us and the C.P. Our Peace desires annoy the dear people at Kemsley House - also we should be made say where we get our funds from. Naturally they didn't mention that O.M. has offered our books to the Government for examination about three months ago. Dirty lot of swine aren't they ?

Our local membership is now 16 members - wish it would grow a bit faster though. Still it has grown from 4 in a year, but that isn't fast enough.

Miss Hayes and Gwyn wished to be remembered to you.

Yours In Union,

(Sgd.) Edna.

EXHIBIT "C". - British Union Merbership Card completed to December, 1939.

EXHIBIT "D". - A sheet of note-paper containing information regarding the dedication of a book to Oswald Mosley.

Hamm had nothing to say in explanation of this.

EXHIBIT "E". - Omnibus letter, undated, addressed from 19, St. John's Rd, Harrow.
This letter contains innuendos capable of quite innocent interpretation.

(Note. From another letter dated March 12th, 1940, and addressed from 17, St. John's Rd, it would appear that EXHIBIT "E" was being written on the same date.)

EXHIBIT "F". - An extract from a letter from Miss Doris Wilkin, 32, Frome St., Islington, N. 1, dated the 18th of March, 1940. This was a love letter from his financee, who, he stated, was not in sympathy with the movement. Hamm's explanation which seemed reasonable was as follows :

"May is the sister of Hamm's fiancee - aged about 30. Wally is a brother of poor physique and did not expect to be accepted by the Military authorities. He therefore wanted to join the merchant service and so wanted to learn morse. Hamm did not know what job he wanted in the merchant service. - suggested 'wireless'. Wally was of very poor physique."

The letter was given to Hamm.

EXHIBIT "G". - A letter from 213, Lyon Park Avenue, Wembley, Middlesex, dated 4th March, 1940.

Stokes is a member at Harrow. Hamm attributes no meaning to German Measles.
Wullliam is a member at Harrow. Hamm does not know whether this is his real name or not.
Pennell is a member at Harrow.
'weather' not understood.
Miller, Stokes, Peregoe, Wullian, Hansbury and Pernell are all British Union - but Hamm does not know Hansbury nor can he place him at all.

EXHIBIT "H". - A letter to H. J. Hibberd dated May 26th, 1940.

Hamm's reference to "coolie-boss" is to Sir John Anderson and the 'cowardly action' referred to is the arrest of Mosley and his associates. The 'danger' in which Hibberd stood was "that he was employed at the Headquarters raided and was a district organizer".

Other notes made at the interview before the Advisory Committee are :-

Hamm had informed the Committee he had failed at the London Intermediate (external) B.E. in French. He had passed in Latin, History (Mod. E and EM.) and English. Started to learn French at about 9 years old and passed the Oxford school in 1931, taking

French. Hamm sat first for the Intermediate in November, 1938 and again in July, 1939, both lines failing in French. Hamm spent 4 days in France, but has been for one month at Hiedelberg staying with Fraulein Fritz at address as in book, in 1937, August, who was then about 17 or 18.

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(28)

EXHIBIT "D".

On Feb. 8th 1940, I arrived at Port Stanley, in the Falkland Islands, to take up a post as a Travelling Teacher. For five years prior to that date I had been a member of British Union, and I arrived in the Falkland Islands convinced that only the principles and policy of Mosley and British Union could solve the problems of the present age. I was convinced, too, that true happiness was only to be found in a life of service to one's fellow-countrymen.

During my first few days in the Falklands I became aware of a vague feeling of disatisfaction with the economic condition of the islands. By the end of my three years' stay I was firmly convinced that here was an outpost of British Empire suffering under the yoke of political and financial jobbery, and democratic neglect. There could be but one solution - National Socialism. In the earnest hope that this brief survey may play some small part in drawing attention to the problem of the Falklands, and thus assist a future British Union Government in solving those problems, I dedicate this book to Oswald Mosley, Leader of British Union.

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(27)

EXHIBIT "E".

19, St. John's Rd,
Harrow.

Dear E.J.,

As you would say we do so miss your absent face! I'm glad to hear you are having an enjoyable trip- you will now have found your new country - I hope the Argentinians haven't raided it yet and imposed as a precautionary measure a black-out. Let us know what your nag is like and how sore you are after a few trips on it. I hope you don't find any mutton rationing in force - such as only about 1½ lbs per head per week.

We are now in the middle of reports - at least I've nearly finished and Woot, etc., have nearly begun. The Cross Country Race is on Thursday and there is a very even entry. We have so many runners that we can hardly get enough pickets. We have to find someone to take your place as The Case is altered this year - preferably one who won't stay inside until it is all over.

I managed to catch German measles. Jean had it shortly after and now Basil has it. Shows by the fact that they are German measles that the country is not so violently patriotic as Mr. Halifax, Chamberlain & Co., would wish. Christopher Robin Friar Woolton has just come in so I'll leave him to carry on.

(Sgd.) Stocky.

Dear E.J.,

Heil! I suppose by now you are on the Falkland Isles, and getting used to the mutton and whale blubber. At least you won't be rationed on that. This term has passed more or less peacefully, especially as half the school has been away with one complaint or another. I think the Stamp Club is still functioning under the able leadership of Master Coldham. I saw in the Observer that your wall painting friend has got caught with the paint pot at last, and got fined £2. Do you remember him sticking all these tickets on that lamp-post when we were waiting for the bus on our way from that Pacifist meeting ? I was glad that copper didn't stop. I hear you had quite a pleasant crossing, but I should not have been put off by the husband boring holes in the back of my neck. Plum is now at Epping. I think he has been working his high temperature dodge again, for we heard that he has had a week or two sick leave. Jean, has now come in, and I'm sure you would like to hear from her. Well, cheerio, and all the best. Don't fall off the horse too many times.

(Sgd.) Friar.

Wotcha, E.J.,

This is little 'Sunshine' signing on ! How is life treating you, you old scoundrel ? You have no idea what it is like here without you, so quiet !! Especially in the evenings, or should I say mornings, oneish!! By the way, have you met any more lu-u-uvely white dogs ?

Well there is no more room to write any more so cheerio !

This is little 'Sunshine' signing off! Keep smiling!!

26)

Hello E.J.,

This is 'Hench' taking over the line for a few mom nts. We were all very glad that you hadn't to swim part of the way and now hope the horse isn't raising too many blisters.

As you know I became resident this term and I must say that I have thoroughly enjoyed being here despite the snow, german measles and so on. We have had some good times and hope to have some more. It seemed rather strange at first not having Bill, Plum and you around but once work began we had no time to think. (You know how hard we all work don't you.') After you had sailed I discovered that the father of a friend of mine had spent two years on the Islands. He told me to warn you about the strength of the beer - but I reckon you've probably discovered that for yourself by now. He also told me how many vests, pants, shorts, waistcoats, jackets, overcoats and oilskins he used to wear in winter. Maybe you'll know something about that soon so I won't harrow your feelings with further details.

Now I'll have to get back to exam. marking (what a waste of life's previous time).

Please note Freddie was beaten right out of the game - everything was marvellous until she went to a job in the heart of Kent. Now I believe she has a uniformed escort but it's funny I don't seem to mind so much as I thought I would. After all the world has plenty more friendships in store for most people - so bungho! for now.

Yours,

(Sgd.) 'Hench'.

THE [illegible]
LORD [illegible], G.C.M.G., ETC.,
SECRETARY OF STATE FOR THE COLONIES.

view/

EXHIBIT "F".

Extract from a letter from Miss Doris Wilkin, 32, Frome St., Islington, N. 1., dated the 18th of March, 1940.

"May is working the new morse code apparatus that Wally bought to-day. She is an expert on transmitting and sending morse, as she used to send telegrams that way in the old days."

EXHIBIT "G".

213, Lyon Park Avenue,
Wembley,
Middlesex.

4th March, 1940.

Dear Hamm,

Thanks very much for your letters, but don't curse me 'two', much for being so long winded in replying. It certainly is fine to hear you had a good voyage and I soon hope to hear you have settled down to your mutton.

Things are going on quite good here. Action sales have increased. Stokes of Wembley has got German Measles. Wullian and Peonell got caught stocking bills, and fined £2 each, rather a blow. B.U. got well beaten at Silvertown and on top of all this the Women are trying to boss the men around. The Social and Dance held at St. George's Hall, Sudbury, was a real success, a jolly good crowed, in spite of the fact that it started snowing in the afternoon and kept on all night, did not get a drink the whole time. I doubt 'weather' you will beleave this. Miller, Stokes, Peregoe, Wullian, Hansbury and Pernell will soon be in the Army, so I think you are better off were you are.

All the Members wish you the best of luck including Miss Penn. Don't forget if you want Action let me know also I will send you any new publication that comes out.

Well all the best for the present will write you again as soon as possible.

Yours in Union,

Harry.

EXHIBIT "H".

A letter to E. J. Hibberd, dated the 26th of May, 1940.

Falkland Islands,

Sunday, May 26th.

Dear Harry,

Many thanks for your letter and for the good wishes of all my friends at Harrow. Please tell them that I am thoroughly enjoying life here. In fact, I feel a rotter when I think how easy life is for me and how tough it is for you all. You will remember I had misgivings before I left about walking out on you, and I felt I had let you down very badly when I heard a few days ago of the cowardly action of the "coolie-boss". Still, although I am 8,000 miles away, my best wishes are with you all, all the time. I hope that you yourself and I shall be looking out for a letter from you as possible.

I am wondering how the funds are standing in v recent events. If membership continues on a norma (or in any other way) please keep me on your recor When I get into Stanley towards the end of the yea send you my subscriptions for this year, and anyth extra I can afford.

I have not troubled to order the paper, as so long to arrive here. But I would be very gr you could send me any important copies, and any publications, for which I will pay you as soon

Here's wishing you strength to your arm ! and bottom's up !

Yours,

(Sgd.) E. J. Hamm.

38

HEADQUARTERS,

FALKLAND ISLANDS DEFENCE FORCE,

STANLEY.

Mr. E. J. Hamm,

"Fennia"

In reply to the request contained in your letter of the 21st inst., I have to inform you that the matter has been referred for instruction, and I will communicate with you in due course. I would point out however that you must anticipate some loss of spiritual as well as physical comfort while in detention.

Major.
Officer Commanding,
Falkland Islands Defence Force.

Copy to H.C.S. for information

(#. 39)

F/232.

3rd August, 40.

Sir,

I am directed by the Honourable the Colonial Secretary to acknowledge the receipt of your letter of the 28th July, 1940.

2. It seems that you do not quite realize either the reason or the manner of your detention.

3. Under the Defence Regulations you have been detained by order of His Excellency the Governor on the grounds that you have been a member of an organization the policy of which is in sympathy with that of a Government with which His Majesty is at war.

4. There is no provision for open trial and your appearance before the Advisory Committee set up for the purpose of that regulation replaced the procedure usual in peace time.

5. Your continued detention here is a question which concerns His Excellency the Governor and the authorities in the United Kingdom. These latter include those at Scotland Yard.

I am,

Sir,

Your obedient servant,

C. Lb.

Ass't. Colonial Secretary.

Mr. E.J. Hamm,
STANLEY.

Stanley.

16-8-40

The Colonial Secretary.
Stanley.

Sir,

I wish to reply to the points raised in the Assistant Colonial Secretary's letter of the 3rd. August.

I was well aware that there was no provision for open trial, but nevertheless I applied for such a trial for two reasons.

Firstly, I was profoundly dissatisfied with the manner in which you examined my case when I appeared before the Advisory Committee. You will recall that I elected to answer any questions you might ask me, and I endeavoured to answer such questions to the best of my ability. I was therefore

45

disappointed to note that you made no attempt to conceal your disbelief of my answers to some of those questions. I wish to protest most emphatically against the manner in which you ridiculed the suggestion that "a C. 3. man wanted to join the Merchant Service. Again, when I appealed to be allowed to return to my position in the camp, you replied with the totally irrelevent question as to whether I had considered joining the British Army! I could not expect you to be aware that in England I had frequently spoken and written against pacifism and the conscientious objector. However, I am entitled to assume that you were aware that His Excellency the Governor had decided to appoint two Travelling Teachers to the Falkland Islands, that

these appointments had been advertised by the Crown Agents for the Colonies, that I had been selected by them for appointment by His Excellency, that I obtained an Exit Permit from the Passport Office, and that I therefore left England, not as a fugitive from military service, but as an officer in His Majesty's Colonial Service. I therefore assume that you were taking advantage of our respective positions to expose me to misplaced sarcasm. I accept the Assistant Colonial Secretary's statement that the Advisory Committee "replaced the procedure usual in peace time." However, while I have a profound respect ~~for~~ our normal British legal system, I feel that I have been

(47)

the victim of a grave miscarriage of justice in the Falkland Islands.

Secondly, I desired a public trial in order to hear the prosecution prove that I had been a member of "an organisation the policy of which is in sympathy with that of a Government with which His ~~Ha~~ Majesty is at war." Nothing could be further from the truth. Such an accusation ignores the fact that British Union was formed from the New Party (established in 1930) and a Fascist Organisation dating from 1926, and was established in October 1932, three months before a National Socialist government came to power in Germany. The accusation ignores the fact that the philosophy and domestic policy of British Union in no way resembles

that of Germany, and that for that reason British Union speakers declined to answer any questions concerning the internal policy of Germany, which could not be of the slightest interest to the British people. It has been repeatedly suggested that the foreign policy of British Union has been dictated, first from Italy and later from Germany. This accusation was first raised in 1935 at the time of the war in Abyssinia, and ignored the fact that British Union foreign policy had remained unchanged since the foundation of the Movement, and had been propagated on innumerable occasions, particularly at Mosley's Albert Hall meeting of 1934. Finally, the legend of "Nazi gold" for British Union funds still persists, in spite of the humiliating experience

(41)

of Sir John Simon when Home Secretary. That Right Honorable Gentleman announced in the House of Commons that he had "irrefutable evidence" that British Union was financed from abroad. Mosley promptly called him "a lying scoundrel," offered to lay British Union accounts before Government auditors, and then sat back to await the production of the "irrefutable evidence." We are still waiting.

In conclusion, I wish to protest most emphatically against my continued detention on a mythical charge of being in sympathy with a foreign power. For ten weeks, although entirely innocent, I have been detained under excessively harsh conditions, forbidden news, exercise (until recently) and even permission to attend Church. I trust that you

40

will now bring this injustice to an end by advising His Excellency to order my release.

E. J. Hamm.

47

M.P. No. S/34/40.

Colonial Secretary's Office,
Stanley,
20th August, 1940.

Sir,

I am directed by the Colonial Secretary to acknowledge the receipt of your letter of the 16th of August, 1940.

I am,
Sir,
Your obedient servant,

A.C.S.

Assistant Colonial Secretary.

Mr. E. J. Hamm,
STANLEY.

Stanley.
18-8-40.

(21)

Commanding Office Falkland Islands Defence Force.
Stanley.

Sir,

I wish to complain about the conditions under which I am detained, and I should be grateful if those conditions could be improved.

Firstly, the fact that I am detained on the "Penna" is in itself a hardship. For the first nine weeks of my detention, with the exception of one walk after our weekly bath and one walk on the far side of the harbour, the only exercise I obtained was that afforded by the meagre deck space. After nine weeks permission was obtained for the use of the boat. This is not available three days a week, and on the four remaining days our

exercise is dependant upon the weather and other conditions. In addition, my condition has lately suffered a change for the worse by your order that I am to be locked below deck at dusk. You will be aware that in the Falklands this is the calmest hour of the day, and therefore that most suited to exercise.

Secondly, my physical condition and general health is suffering from the fact that I have existed for the past ten weeks on a diet of meat, peas and beans, although we have repeatedly applied for other vegetables.

Thirdly, I wish to apply once more for permission to receive news bulletins. At a time of crisis it is a serious mental hardship to be deprived of any news of the welfare of my country.

(49)

Fourthly, on several occasions we have been left without coal, in spite of the fact that we have given notice of a shortage some time before the stock was exhausted. On Friday I was forced to steal from the stoke-hole coal the property of the Falkland Islands Company, and when this stock was exhausted, passed the remaining hours of the day with a dressing-gown and overcoat over my clothes.

Fifthly, on July 21st. I applied to you for permission to attend Church services, and am still awaiting a definite reply.

When the arrests of members of British Union began, Sir John Anderson informed the House of Commons that the measure was not directed against the views or propagandist activities of the movement, but was considered necessary because the movement might constitute a danger to the State. I

(48)

therefore assume that the Government's intention is not to punish us for any offences we are alleged to have committed, but rather to prevent us from offending in the future. While protesting my ignorence of any subversive intention by British Union, I would suggest that this alleged intention could be frustrated by detention under humane conditions. I therefore apply:

a. To be interned ashore where I might have adequate exercise.

b. To be granted improved ~~food~~ rations.

c. To be allowed to receive news bulletins.

d. To be provided with adequate fuel.

e. To be allowed to attend Church services.

Thanking you in anticipation,

I remain,

Sir, yours faithfully,

C. J. Hamm

(52)

No.
(It is requested that, in any reference to this minute, the above Number and the date may be quoted).

MINUTE.

23rd August, 1940.

From The Officer Commanding,
Falkland Islands
Defence Force,
Stanley, Falkland Islands.

To E. J. Hamm, Esq.,
Stanley,
Falkland Islands.

I am in receipt of your letter of the 18th inst., and have to inform you as follows with regard to the five points you raise.

1. As there is not at the moment any alternative accomodation for internees it is not possible for you to be interned ashore. The administrative side of your internment would be much simpler if you could be interned ashore and some arrangement may be made in the near future, for this reason.

2. Your rations are as nearly as possible the same scale as laid down for the Defence Force on outpost. You are at liberty to augment them personally as the troops do should you so wish. I personally have had no green vegetables for several weeks now as they are not procurable.

3. I will see what can be done as to news bulletins.

4. Adequate fuel supply has been issued and your statements in this connection are not strictly accurate.

5. It is not possible for you to attend Church Services. The Rev. Lowe has seen you on this point I beleive.

Major,
Officer Commanding,
Falkland Islands Defence Force.

Honourable Colonial Secretary.

Copy of my reply to the attached letter forwarded for your information please.

23. VIII. 40.

Stanley.
3-9-40.

54

His Excellency the Governor.
Government House.
Stanley.

Your Excellency,

I respectfully submit this letter for your consideration.

On Monday June 10th. I appeared before a Tribunal appointed by your Excellency to hear my appeal against my detention. The Colonial Secretary informed me that I was not obliged to answer any questions, but I elected to do so, and endeavoured to answer those questions to the best of my ability. I was therefore disappointed to note that he made no attempt to conceal his disbelief of a number of my answers. I therefore asked if I might be allowed to give evidence upon oath, but this request was refused. The

53

Colonial Secretary appeared to be unduly prejudiced against me and in a letter to him I felt constrained to describe his attitude as "misplaced sarcasm." I have written several letters to the Colonial Secretary supplying him with further information, and appealing to him to advise Your Excellency to order my release. As this has met with no response I respectfully ask Your Excellency to inquire personally into my case, or to refer it to another tribunal, before which I might have the right to appear accompanied by a third party to watch my interests.

Thanking you in anticipation,

I remain,

Sir,

your humble and

obedient servant,

E. J. Hamm.

(55)

S/34/40.

10th September, 40.

Sir,

With reference to your letter of the 3rd of September, I am directed by the Governor to inform you that His Excellency has considered your application for your release or for trial by some tribunal other than that provided by the law and is unable to grant your request.

I am,

Sir,

Your obedient servant,

(Sgd.) A. W. CARDINALL

Colonial Secretary.

Mr. E. J. Hamm.
STANLEY.

6-6

THE TIMES TUESDAY AUGUST 13 1940

Law Report, Aug. 12

HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
DEFENCE REGULATIONS: APPLICATION FOR HABEAS CORPUS EX PARTE LEES

Before MR. JUSTICE HUMPHREYS, MR. JUSTICE OLIVER, *and* MR. JUSTICE CROOM-JOHNSON

The COURT adjourned an application for a writ of *habeas corpus* by Mr. Aubrey Trevor Oswald Lees, of His Majesty's Prison, Brixton.

By his application Mr. Lees asked that the Court might order that a writ of *habeas corpus* should be issued, directed to the Home Secretary, Sir John Anderson, to have the applicant before the Court immediately after the receipt of the writ for the consideration by the Court of all the necessary matters concerning the applicant's detention.

Mr. Gerald Gardiner and Mr. J. W. Williamson appeared for the applicant.

Mr. GARDINER, opening the application, said that Mr. Lees had been detained by the Executive without charge or trial and therefore in a manner *prima facie* contrary to the liberties granted by the Great Charter and the Bill of Rights.

Counsel read an affidavit by Mr. Lees, in which Mr. Lees stated that he was a British subject by birth. Since June 20, 1940, he had been detained in Brixton, Liverpool, and Stafford Prisons by the order of the Home Secretary. At the moment of his arrest he was given a copy of what purported to be an order whereunder he was detained. He had no means of knowing whether or not such an order had in fact been made. The order stated that whereas the Home Secretary had reasonable cause to believe that he (Mr. Lees) had been or was a member of, or that he had been or was active in the furtherance of the objects of, an organization in respect of which the Home Secretary was satisfied (*a*) that those in control of the organization had had associations with persons concerned in the Government of a Power with which his Majesty was at war; and (*b*) that there was danger of the utilization of the organization for purposes prejudicial to the public safety, the defence of the Realm, the maintenance of public order, the efficient prosecution of a war in which his Majesty was engaged, or the maintenance of supplies or services essential to the life of the community, therefore, in pursuance of the powers conferred on him by regulation 18 B (1A) of the Defence (General) Regulations, 1939, the Home Secretary directed that the applicant should be detained.

Mr. Lees submitted, the affidavit continued, that the order, if made, was bad for ambiguity, as it was impossible to tell whether it was made on the ground that Sir John Anderson had reasonable cause to believe that he (Mr. Lees) had been or was a member of an organization of the kind referred to in it, or on the ground that he had reasonable ground to believe that he (Mr. Lees) had been active in the furtherance of the objects of such an organization.

Mr. Lees further stated that the Home Secretary never had reasonable or any cause to believe that he had been or was a member of or active in the furtherance of the objects of any such organization as mentioned in regulation 18 B (1A).

A DOCUMENT

Over a month after his detention, Mr. Lees stated, he was given a document from the advisory committee at the Home Office appointed under the Defence Regulations in which the order against him was stated to have been made for the reason, among others, that the Home Secretary had reasonable cause to believe that he (Mr. Lees) had been a member of the organization now known as the British Union; that he had been active in the furtherance of its objects; and that it was necessary to exercise control over him.

The particulars given in the document, Mr. Lees stated, alleged that he had expressed pro-Fascist views; had furnished the organization with materials for propaganda; had attended meetings at which Sir Oswald Mosley was present, such meetings being held for the purpose of coordinating Fascist and anti-Semitic activities in Great Britain, and for negotiating a peace with the leader of the German Reich; and that he (Mr. Lees) had been propagating anti-British views and endeavouring to hinder the war effort in Great Britain with a view to a Fascist revolution.

Mr. Lees, dealing with those particulars, stated that he did not know whether the allegations made against the British Union and Sir Oswald Mosley were true or not, but that he (Mr. Lees) was not, and never had been, a member of that organization. His political views, he stated, could best be described as Radical. He had never been a member of any political party. He had never been a member of any organization other than the Colonial Civil Service, the Regular Army Reserve of Officers, and others which he specified, nor had he ever subscribed to the funds of the British Union or furnished it with material for propaganda. He had attended meetings at which Sir Oswald Mosley had been present, but they had not been held for the purposes alleged, and he (Mr. Lees) had only attended the meetings by chance and out of curiosity. So far from propagating anti-British views or hindering the country's war effort with a view to a Fascist revolution, which, he said, he would not welcome at all, he had for some 23 years been continuously in the service of the Crown. When arrested he was awaiting his ship in order to take up a new post to which he had been appointed on the Gold Coast.

A COMMITTEE MEETING

At a meeting of the committee charged with the duty of inquiring into his detention he was severely interrogated, and his denial that he was a member of the British Union was, he said, accepted, no evidence to the contrary being adduced.

Mr. Lees admitted that he did not like Jews and thought that they had too much power in Great Britain, and he admitted to the committee that he had said so. Referring to a letter which the committee had produced in which he had said that he did not like Lord Halifax, Mr. Lees admitted that that was so, but he submitted that nothing in regulation 18 B (1A) entitled the Home Secretary to detain his Majesty's subjects without trial for expressing in correspondence with friends the view that they did not like Jews, or a view adverse to a particular member of his Majesty's Government.

That concluded the affidavit.

MR. JUSTICE HUMPHREYS asked how the Court could go into matters of fact of the kind referred to. All that the Court could do was to decide whether the applicant was illegally detained. He could not be illegally detained if the Home Secretary had power under the regulations to detain him.

Mr. GARDINER referred to Rex v. Halliday (33 *The Times* L.R., 336; [1917] A.C. 260) and submitted that, if it were established that the facts on which the detention order was based did not exist, the order was invalid and the subject was entitled to his liberty. If that submission were correct, then, counsel submitted, on the evidence at present before the Court the applicant was entitled to the writ, when the matter could be fully argued on the return.

MR. JUSTICE HUMPHREYS said that the decision of the Court was that the application should be adjourned so that notice might be given to the Home Secretary of the matter. If counsel for the applicant asked for the matter to be expedited, the Court would consent.

The COURT directed that Mr. Lees's solicitors should give notice of the application to the Home Secretary forthwith, and also to the Governor of Brixton Prison, and refused an application for bail which counsel said that he made in order that Mr. Lees should be present in Court when his application was being argued.

Solicitors.—Messrs. Oswald Hickson, Collier and Co.

(57)

Law Report, Aug. 22

HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
DEFENCE REGULATIONS : APPLICATION FOR HABEAS CORPUS
IN RE LEES

Before MR. JUSTICE HUMPHREYS, MR. JUSTICE OLIVER, *and* MR. JUSTICE CROOM-JOHNSON

The COURT refused the application for a writ of *habeas corpus* by Mr. Aubrey Trevor Oswald Lees, of his Majesty's Prison, Brixton, and said that they would give their reasons later.

By his application Mr. Lees asked that the Court might order that a writ of *habeas corpus* should be issued, directed to the Home Secretary, Sir John Anderson, to have the applicant before the Court immediately after the receipt of the writ for the consideration by the Court of all the necessary matters concerning the applicant's detention.

Mr. Gerald Gardiner and Mr. J. W. Williamson appeared for the applicant; the Solicitor-General (Sir William Jowitt, K.C.) and Mr. Valentine Holmes for the Home Secretary. Mr. G. D. Roberts, K.C., and Mr. H. K. Sadler held a watching brief.

It was stated on August 12 by counsel for the applicant when applying *ex parte* for the rule that Mr. Lees had been detained by the Executive without charge or trial and therefore in a matter *prima facie* contrary to the liberties granted by the Great Charter and the Bill of Rights.

The Court directed that notice should be given to the Home Secretary and adjourned the hearing for that to be done.

Mr. GARDINER to-day said that notice had now been given as directed by the Court.

MR. JUSTICE HUMPHREYS said that the most convenient course would be to deal with the matter *de novo*.

MR. LEES'S AFFIDAVIT

Counsel read an affidavit by Mr. Lees, which was more fully set out in *The Times* of August 13, and in which Mr. Lees stated that he was a British subject by birth.

He said that the order stated that whereas the Home Secretary had reasonable cause to believe that he (Mr. Lees) had been or was a member of, or that he had been or was active in the furtherance of the objects of, an organization in respect of which the Home Secretary was satisfied

(*a*) that those in control of the organization had had associations with persons concerned in the Government of a Power with which his Majesty was at war: and (*b*) that there was danger of the utilization of the organization for purposes prejudicial to the public safety, the defence of the Realm, the maintenance of public order, the efficient prosecution of a war in which his Majesty was engaged, or the maintenance of supplies or services essential to the life of the community,

therefore, in pursuance of the powers conferred on him by regulation 18 B (1A) of the Defence (General) Regulation, 1939, the Home Secretary directed that the applicant should be detained.

Mr. Lees stated that the Home Secretary never had reasonable or any cause to believe that he had been or was a member of or active in the furtherance of the objects of any such organization as mentioned in regulation 18 B (1A).

The particulars given him in a document from the advisory committee at the Home Office appointed under the Defence Regulations, over a month after his detention, Mr. Lees stated, alleged that he had expressed pro-Fascist views; had furnished the organization with materials for propaganda; had attended meetings at which Sir Oswald Mosley was present, such meetings being held for the purpose of coordinating Fascist and anti-Semitic activities in Great Britain, and for negotiating a peace with the leader of the German Reich; and that he (Mr. Lees) had been propagating anti-British views and endeavouring to hinder the war effort in Great Britain with a view to a Fascist revolution.

Mr. Lees, dealing with those particulars, stated that he did not know whether the allegations made against the British Union and Sir Oswald Mosley were true or not, but that he (Mr. Lees) was not, and never had been, a member of that organization. His political views, he stated, could best be described as Radical. He had never been a member of any political party. He had never been a member of any organization other than the Colonial Civil Service, the Regular Army Reserve of Officers, and others which he specified, nor had he ever subscribed to the funds of the British Union or furnished it with material for propaganda. He had attended meetings at which Sir Oswald Mosley had been present, but they had not been held for the purposes alleged, and he (Mr. Lees) had only attended the meetings by chance and out of curiosity. So far from propagating anti-British views or hindering the country's war considered the information, and had come to the conclusion that there were clear grounds for believing that Mr. Aubrey Trevor Oswald Lees was a member of, and was and had been active in the furtherance of, the objects of an organization as respects which he (Sir John Anderson) was satisfied.

(*a*) that the persons in control of the organization had or had had associations with persons concerned in the Government of, or sympathies with the Government of, a Power with which his Majesty is at war, and

(*b*) that there was a danger of the utilization of the organization for purposes prejudicial to the public safety, the defence of the realm, the maintenance of public order, the efficient prosecution of a war in which his Majesty is engaged or the maintenance of supplies or services essential to the life of the community.

In a supplemental affidavit Sir John Anderson stated that, on consideration of the reports and information referred to in his previous affidavit, he had come to the conclusion that in the national interest it was necessary to exercise control over the applicant, and accordingly made the order.

The SOLICITOR-GENERAL said that if that affidavit were true, and there was no reason to suggest the contrary, that was, in his submission, an end of the matter. It was impossible for the Court to embark on a consideration of what the reports received by the Home Secretary were, and he (counsel) would take the responsibility of informing the Court that it would be quite impossible for the reports and the names of the persons making them to be disclosed. It would obviously be against public policy that that should be done. It was sufficient for him to say that Sir John Anderson, having had those reports from responsible persons, had reasonable cause for the belief which he held regarding the applicant. He (counsel) was not controverting any fact set out in the applicant's affidavit or referring to any event which took place after the order was made, but was simply saying that, if the Home Secretary had reports before him which led him to a certain conclusion, that was what he was bound to act on.

Mr. GARDINER replied.

MR. JUSTICE HUMPHREYS said that all the members of the Court were of opinion that the application must be refused. They would give their reasons at a later date.

Solicitors. — Messrs. Oswald Hickson, Collier and Co.; the Treasury Solicitor.

which, he said, he would not welcome at all, he had for some 23 years been continuously in the service of the Crown. When arrested he was awaiting his ship in order to take up a new post to which he had been appointed on the Gold Coast.

At a meeting of the committee charged with the duty of inquiring into his detention his denial that he was a member of the British Union was, he said, accepted, no evidence to the contrary being adduced.

Mr. Lees admitted that he did not like Jews and thought that they had too much power in Great Britain. Referring to a letter which the committee had produced in which he had said that he did not like Lord Halifax, Mr. Lees admitted that that was so, but he submitted that nothing in regulation 18 B (1A) entitled the Home Secretary to detain his Majesty's subjects without trial for expressing in correspondence with friends the view that they did not like Jews, or a view adverse to a particular member of his Majesty's Government.

Mr. GARDINER submitted that the order made was bad on the face of it. The regulation provided for the detention of a person who had been guilty of being a member of a particular association or had been active in furtherance of the objects of the association. The present order was made on either one or other of those grounds, and an order which did not specify, as this did not, on which of two possible grounds it was made was a bad order. Counsel further submitted that the applicant was entitled to a writ if he could show that he had not done anything which would justify the making of an order, or if the Court held that the Secretary of State had in fact no reasonable cause for believing that the order should be made. The evidence was that the applicant was not and never had been a member of the British Union or active in the furtherance of its objects; that he did not like Jews; and that he did not like one of the members of his Majesty's Government.

MR. JUSTICE CROOM-JOHNSON.—The facts set out in the applicant's affidavit may be only a percentage of the evidence on which the Home Secretary acted.

MR. JUSTICE HUMPHREYS.—I understand you are saying that this Court may inquire into the reasonableness of the action taken by the Home Secretary, and your submission is that there is no evidence on which a reasonable person could have arrived at the conclusion reached by the Home Secretary?

Mr. GARDINER.—That is my submission.

ARGUMENT FOR HOME SECRETARY

The SOLICITOR-GENERAL, for the Home Secretary, said that he disclaimed at once the view that the Court was bound to accept the evidence of the Home Secretary, and he accepted the view that the foundation of the power of the Home Secretary to make the order was whether he had reasonable cause to believe the information he had received. It followed, therefore, that he agreed that, if the applicant could establish that at the material time the Home Secretary had no reasonable cause for his belief, the applicant would be entitled to his release. The Home Secretary could not in the nature of things make personal investigations himself. He must rely on others. Supposing, as a mere hypothesis, that he received from a person whom he believed to be a reputable and reliable correspondent information that the applicant was a member of the organization or active in its affairs, it was obvious that so long as the Home Secretary believed the reports which he received he would have reasonable grounds for believing that the applicant was a member of the organization.

He (counsel) had thought it right to get Sir John Anderson to prepare an affidavit, and that had been done.

In that affidavit Sir John Anderson stated that before he made the order he had received reports and information from persons in responsible positions who were experienced in investigating matters of the kind in question and whose duty it was to make such investigations and to report the same to him confidentially. He had carefully studied the reports,

O R D E R.

FALKLAND ISLANDS DEFENCE REGULATIONS.

Governor.

WHEREAS by an Order dated the 29th day of May, 1940, one EDWARD JEFFERY HAMM, a British Subject, was detained under the command and control of the Officer Commanding the Falkland Islands Defence Force;

AND WHEREAS it appears to the Governor that it is expedient in the interests of the public safety and the defence of the realm that the said British Subject should be detained but that his detention in the Colony is inexpedient;

AND WHEREAS arrangements have been made with the Union of South Africa for the removal of the said British Subject to that Country and for his detention therein;

NOW, THEREFORE, His Excellency the Governor in exercise of the powers in him vested by the Falkland Islands Defence Regulations, 1939, is pleased to order and it is hereby ordered that the said British Subject shall be placed on board the British ship "Lafonia" and be detained under the command and control of the Master and after his arrival in the Union of South Africa be delivered over to the charge of the Union Authorities.

Dated this 26th day of October, 1940.

By Command,

Colonial Secretary.

M.P. No. S/34/40.

~~25~~
59

O R D E R.

FALKLAND ISLANDS DEFENCE REGULATIONS.

Governor.

In exercise of the powers in him vested by the Falkland Islands Defence Regulations, 1939, His Excellency the Governor is pleased to order and it is hereby ordered as follows :-

The Order made on the 29th of May, 1940, for the detention and control of the person therein mentioned, to wit :-

EDWARD JEFFERY HAMM,

is hereby rescinded.

Dated this 26th day of October, 1940.

By Command,

Colonial Secretary.

M.P. No. S/34/40.

60

Law Report, Sept. 9

HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

DEFENCE REGULATIONS: HABEAS CORPUS REFUSED

IN RE LEES

Before MR. JUSTICE HUMPHREYS, MR. JUSTICE OLIVER, *and* MR. JUSTICE CROOM-JOHNSON

The COURT delivered judgment giving their reasons for refusing, on August 22, the application for a writ of *habeas corpus* by Mr. Aubrey Trevor Oswald Lees, now in his Majesty's Prison, Brixton.

It was stated on August 12 by counsel for the applicant when applying *ex parte* for the rule that Mr. Lees had been detained by the Executive without charge or trial and therefore in a manner *prima facie* contrary to the liberties granted by the Great Charter and the Bill of Rights.

When the matter was argued counsel read an affidavit by Mr. Lees in which he stated that he was a British subject by birth.

He said that the order stated that whereas the Home Secretary had reasonable cause to believe that he (Mr. Lees) had been or was a member of, or that he had been or was active in the furtherance of the objects of, an organization in respect of which the Home Secretary was satisfied

(*a*) that those in control of the organization had had associations with persons concerned in the Government of a Power with which his Majesty was at war; and (*b*) that there was danger of the utilization of the organization for purposes prejudicial to the public safety, the defence of the Realm, the maintenance of public order, the efficient prosecution of a war in which his Majesty was engaged, or the maintenance of supplies or services essential to the life of the community,

therefore, in pursuance of the powers conferred on him by regulation 18 B (1A) of the Defence (General) Regulations, 1939, the Home Secretary directed that the applicant should be detained.

The particulars given to him (Mr. Lees) in a document from the advisory committee at the Home Office appointed under the Defence Regulations alleged that he had expressed pro-Fascist views. Mr. Lees said that he was not, and never had been, a member of the British Union of Fascists: so far from propagating anti-British views or hindering the country's war effort with a view to a Fascist revolution, which, he said, he would not welcome at all, he had for some 23 years been continuously in the service of the Crown. When arrested he was awaiting his ship in order to take up a new post to which he had been appointed on the Gold Coast.

An affidavit by the Home Secretary was read in which Sir John Anderson stated that before he made the order he had carefully studied the reports made to him, had considered the information in them, and had come to the conclusion that there were clear grounds for believing that Mr. Lees was a member of, and was and had been active in the furtherance of, the objects of an organization as respects which he (Sir John Anderson) had come to the conclusions stated.

The Court then intimated that the application must be refused, but that they would give their reasons later.

Mr. Gerald Gardiner and Mr. J. W. Williamson appeared for the applicant; the Solicitor-General (Sir William Jowitt, K.C.) and Mr. Valentine Holmes for the Home Secretary. Mr. G. D. Roberts, K.C., and Mr. H. K. Sadler held a watching brief.

JUDGMENT

MR. JUSTICE HUMPHREYS, in giving the judgment of the Court, said that the first ground of objection to the Home Secretary's order was that it was bad for duplicity in that the two allegations of membership of, and activity in connexion with the objects of, the organization were stated in the alternative. It was said that they afforded separate grounds for making the order, and that one or other or both of them should appear as the reason for making the order. There was nothing in that point. The order, which followed strictly the language of the regulation, was not a conviction, nor an indictment, nor even a charge. There was nothing in the statute or the regulations requiring that the order should be in any particular form, and it was not invalid on that ground.

The only other point taken was that the order was invalid because the Home Secretary never had any reasonable cause to believe that the applicant was a person to whom the regulation applied. There was no doubt that on an application for a writ of *habeas corpus* the Court had power to inquire into the validity of the order of detention and for that purpose to ascertain whether the Home Secretary had reasonable cause for the belief expressed in the order. But the Home Secretary was bound to act on information supplied to him by others, and that information was necessarily confidential. The disclosure of it to the applicant and to the public, together with the identity of the informants, might well be highly prejudicial to the interests of the State.

In the present case the Court had before them an affidavit by Sir John Anderson stating that he had carefully considered the matter and had come to the conclusion that there was clear ground for believing, and that he sincerely believed, that the applicant was a person to whom Regulation 18B (1A) applied. The Court accepted those statements and were satisfied that the Home Secretary had reasonable cause for believing that the applicant was a person to whom the regulation applied.

The application was, accordingly, dismissed, with costs.

Solicitors.—Messrs. Oswald Hickson, Collier and Co.; Treasury Solicitor.

Law Report, Oct. 2

COURT OF APPEAL

AN APPLICATION FOR HABEAS CORPUS : APPEAL

IN RE LEES

Before LORD JUSTICE MACKINNON, LORD JUSTICE GODDARD, *and* LORD JUSTICE DU PARCQ

The COURT dismissed this appeal by Mr. Aubrey Trevor Oswald Lees from a decision of the Divisional Court dismissing his application for a writ of *habeas corpus*. The application had been made in respect of his detention in Brixton Prison under the Defence Regulations, and it was stated when the appeal was called on that he had been released.

Mr. Gerald Gardiner and Mr. J. W. Williamson appeared for the appellant; the Solicitor-General (Sir William Jowitt, K.C.) and Mr. Valentine Holmes for the Home Secretary.

It was stated on August 12 by counsel for the applicant when applying *ex parte* to the Divisional Court for the rule that Mr. Lees had been detained by the Executive without charge or trial and therefore in a manner *prima facie* contrary to the liberties granted by the Great Charter and the Bill of Rights.

When the matter was argued counsel read an affidavit by Mr. Lees in which he stated that he was a British subject by birth. He said that the order stated that whereas the Home Secretary had reasonable cause to believe that he (Mr. Lees) had been or was a member of, or that he had been or was active in the furtherance of the objects of, an organization in respect of which the Home Secretary was satisfied (*a*) that those in control of the organization had had associations with persons concerned in the government of a Power with which his Majesty was at war; and (*b*) that there was danger of the utilization of the organization for purposes prejudicial to the public safety, the defence of the realm, the maintenance of public order, the efficient prosecution of a war in which his Majesty was engaged, or the maintenance of supplies or services essential to the life of the community, therefore, in pursuance of the powers conferred on him by regulation 18B, 1 (A), of the Defence (General) Regulations, 1939, the Home Secretary directed that the applicant should be detained.

The particulars given to him (Mr. Lees) in a document from the advisory committee at the Home Office appointed under the Defence Regulations alleged that he had expressed pro-Fascist views. Mr. Lees said that he was not, and never had been, a member of the British Union of Fascists: so far from propagating anti-British views or hindering the country's war effort with a view to a Fascist revolution, which, he said, he would not welcome at all, he had for some 23 years been continuously in the service of the Crown. When arrested he was awaiting his ship in order to take up a new post to which he had been appointed on the Gold Coast.

An affidavit by the Home Secretary was read, in which Sir John Anderson stated that before he made the order he had carefully studied the reports made to him, had considered the information in them, and had come to the conclusion that there were clear grounds for believing that Mr. Lees was a member of, and was and had been active in the furtherance of, the objects of an organization as respects which he (Sir John Anderson) had come to the conclusions stated.

The Court then intimated that the application must be refused, and gave their reasons on September 9.

APPLICATION FOR COSTS

When the appeal was called on, Mr. GARDINER stated that it would not be effective because Mr. Lees had been released from prison. But he (counsel) asked for the costs of the appeal. Allegations had been made against Mr. Lees that he was a member of a certain body and had done certain things. Mr. Lees had denied those allegations in an affidavit which he had presented to the Divisional Court.

Sir John Anderson, the Home Secretary, had also sworn an affidavit in which it was not suggested that Mr. Lees had in fact done any of the things alleged, but which only stated that the Home Secretary honestly believed that he had done them at the time when the order for his detention was made.

SIR WILLIAM JOWITT said that it was a fallacy to say that the Home Secretary's action in releasing Mr. Lees indicated that he had been wrong in detaining him, or that the view which he now took of the matter was different from the view which he took at the time of making the order. Since the order made by the Divisional Court dismissing Mr. Lees's application, the advisory committee had made a recommendation for the release of Mr. Lees, and the Home Secretary, having decided to act on that recommendation, had suspended the order by which Mr. Lees had been detained. The order had not been cancelled. The Home Secretary had merely suspended its operation.

The Divisional Court had considered the question whether there was reasonable cause for the Home Secretary's belief that Mr. Lees had been a member of the body known as the British Union, or had had any connexion with it. The Court had decided that the Home Secretary had had reasonable cause, and that decision had not been shown to be wrong.

Mr. GARDINER said that, since his application for costs was opposed, he wished to argue the appeal. Mr. Lees had never been informed what the advisory committee had thought about the matter. The Solicitor-General had merely stated that he understood that Mr. Lees had been released.

If it were considered sufficient, in order to detain a person under those regulations, merely to make an affidavit of the kind made by the Home Secretary, then it was virtually useless for any person to make application by way of *habeas corpus*. Were such a person as innocent as the day or a true patriot, however wrongly he was in prison the Home Secretary had only to make an affidavit saying that, at the time, he reasonably believed certain allegations to be true to prevent the person being released.

LORD JUSTICE DU PARCQ said that he was inclined to think that it was a condition precedent to the exercise of the power in question not only that the Home Secretary at the time believed the allegations made against Mr. Lees but also that he had reasonable cause for believing them. Supposing that a Home Secretary made an obvious blunder, he (his Lordship) was inclined to think that an order for detention in such circumstances would be bad. If the Home Secretary stated that he had materials before him which he had considered, then, even putting the matter most favourably for the applicant, the applicant would have to adduce strong evidence to show that the Home Secretary did not have reasonable cause.

Mr. GARDINER submitted that it was easy for the authorities to make another regulation giving the Home Secretary an absolute discretion in matters of that kind. If, however, it was not right for the Home Secretary to take it on himself to decide the question which the Court had to decide—namely, whether the Home Secretary had reasonable cause for his belief—then the applicant had a right to his writ.

SIR WILLIAM JOWITT said that he had himself seen the reports on which the Home Secretary had acted, and he (counsel) regarded it as obviously against the public interest that the names of the informants should be disclosed.

JUDGMENT

LORD JUSTICE MACKINNON, giving judgment, said that the Divisional Court had dealt with the matter on the basis of an affidavit by Mr. Lees and two affidavits of the Home Secretary, and on those materials they had refused the application. The appeal was really academic, because since the hearing before the Divisional Court the applicant had been released under certain conditions imposed by the Home Secretary. It was suggested that he was entitled to the costs of the appeal because he had been released and so had, it was said, in substance won the fight. It had therefore been necessary to examine the merits of the appeal.

He (the Lord Justice) agreed with everything which had been said by Mr. Justice Humphreys in delivering the judgment of the Divisional Court. It was obvious from the terms of the regulation that if the Home Secretary honestly believed with reasonable cause that the applicant was of the character described by the regulation he was authorized to make the detention, and this decision was not subject to review under the Habeas Corpus Act. The appeal must be dismissed, with costs.

LORD JUSTICE GODDARD and LORD JUSTICE DU PARCQ agreed.

Solicitors.—Messrs. Oswald Hickson, Collier and Co.; Treasury Solicitor.

DECODE.

62

No. 129.

TELEGRAM.

From High Commissioner, South Africa,

To His Excellency the Governor, Falkland Islands.

Despatched: 7th January *19* 40 *Time:*

Received: 7th January *19* 40 *Time:* 17.30.

Addressed to the Governor of the Falkland Islands C 7 repeated to Dominions Office 18.

1. E.J.Hamm is a British subject, late Government schoolmaster Falkland Islands is now interned here having been transferred from the Falkland Islands at the request of the Governor. He is stated to belong to the British Union of Fascists.

2. He has applied to Union Director of Internment for permission to appeal against internment on the ground that he was arrested without just cause, that he was not informed of the reason for arrest in time to allow him to prepare defence, that he was refused the right to give evidence on oath or call witnesses, that chairman of tribunal which heard appeal displayed unwarranted prejudice, and that he was refused the right as officer in the Colonial Service to appeal to the Secretary of State.

Appears the Union Authorities have enquired what action it is desired should be taken and I should be grateful for guidance as to reply that should be returned. In particular what procedure would have been adopted had he remained in the Falkland Islands and made similar appeal.

63

Order.

Falkland Islands Defence Regulations.

H. HENNIKER-HEATON

Governor.

In exercise of the powers in him vested by the Falkland Islands Defence Regulations, 1939, His Excellency the Governor is pleased to order and it is hereby ordered as follows :–

The Order made on the 29th of May, 1940, for the detention and control of the person therein mentioned, to wit :–

EDWARD JEFFERY HAMM,

is hereby rescinded.

Dated this 26th day of October, 1940.

By Command,

Colonial Secretary.

M.P. S/34/40.

64

Order.

Falkland Islands Defence Regulations.

(Sgd.) H. HENNIKER-HEATON

Governor.

WHEREAS by an Order dated the 29th day of May, 1940, one EDWARD JEFFERY HAMM, a British Subject, was detained under the command and control of the Officer Commanding the Falkland Islands Defence Force;

AND WHEREAS it appears to the Governor that it is expedient in the interests of the public safety and the defence of the realm that the said British Subject should be detained but that his detention in the Colony is inexpedient;

AND WHEREAS arrangements have been made with the Union of South Africa for the removal of the said British Subject to that Country and for his detention therein;

NOW, THEREFORE, His Excellency the Governor in exercise of the powers in him vested by the Falkland Islands Defence Regulations, 1939, is pleased to order and it is hereby ordered that the said British Subject shall be placed on board the British ship "Lafonia" and be detained under the command and control of the Master and after his arrival in the Union of South Africa be delivered over to the charge of the Union Authorities.

Dated this 26th day of October, 1940.

By Command,

Colonial Secretary.

M.P. S/34/40.

DECODE.

65

TELEGRAM.

From His Excellency the Governor,

To High Commissioner for South Africa.

Despatched: 10th January, *19* 41. *Time:* .....

Received: ... ... *19* .... *Time:* .....

Your telegram of 7th January.

1. E. J. Hamm's objections to internment were fully considered by a committee composed of the Colonial Secretary the Naval Officer in Charge and the Officer Commanding the Defence Force. The Committee unanimously recommended internment.

2. Hamm wrote while interned numerous letters of complaint to Senior Officials and appealed to me for a new trial. In none of these did he complain that he had not had sufficient time in which to prepare his defence or that he had been refused the right to call witnesses nor did he at any time ask to appeal to the Secretary of State.

3. I suggest that Union Authorities be advised that Hamm's remedy is either to write to the Secretary of State for the Colonies through me or to exercise his further unquestioned right of petitioning the King. It does not appear that he would have had any other resource had he remained in the Colony.

GOVERNOR.

I.D.

(66)

DECODE.

No. 332

TELEGRAM.

From Secretary of State,

To His Excellency the Governor, Falkland Islands.

Despatched: 16th January 1941 *Time:*

Received: 16th January 1941 *Time:* 17.20.

Rec'd 62

176/39.

No.11 Secret Reference to telegram No.18 from United Kingdom High Commissioner in South Africa repeated to you.

As you will have seen from my circular telegram No.219 this transfer was affected without legal authority and persons concerned in it have probably rendered themselves liable to penalties of Habeus Corpus Act and to claim for damages for wrongful imprisonment. In order to enable me to consider question further please telegraph whether person named was in fact refused right to give evidence on oath or to call witnesses before committee and to appeal to me and also indicate as fully as possible what were precise character of his activities in the colony to which reference is made in paragraph 6 of your despatch of July 20th and my telegram saving No.10 to which I have not yet received a reply.

Rec'd 37

(67)

~~DECODE~~

TELEGRAM. SENT.

From His Excellency the Governor, Falkland Islands,

To Secretary of State.

Despatched: 16th January *19* 41 *Time:*

Received: *19* *Time:*

Your saving telegram No.10 Secret received today undecypherable table destroyed.

I.D.C.O.

~~CONFIDENTIAL~~

69

TELEGRAM. SENT.

From His Excellency the Governor, Falkland Islands,

To Secretary of State.

Despatched : 20th January *19* 41 *Time :*

Received : *19* *Time :*

Rec'd 26

No.10 Secret Your telegram No.11 Secret.

1. Action against Hamm was taken under local Defence Regulation 17(1) as amended by Regulations of 29th March 29th May 1940.

2. He was made fully aware of his position and rights by Advisory Committee the Regulations being read out to him carefully. He offered to give evidence on oath but Chairman said that the Committee would be satisfied with his word. I am not aware that Committee had any statutory or inherent right to take evidence on oath.

3. Committee was composed of Colonial Secretary, Chairman, Naval Officer in Charge and Officer Commanding Defence Force. I am satisfied that the hearing was most fairly conducted. It is preposterous as it is untrue to say that Hamm was refused the right to call witnesses or to appeal to you.

4. His activities consisted in using his position as travelling schoolmaster to inculcate fascist doctrines into farm workers and children. Exhibit D enclosed in my despatch of 20th July illustrates his intention of making this his life's work here.

5. After due consideration of all factors including report of Advisory Committee I was satisfied fully that internment was necessary in the interests of defence.

6. Hamm was sent to South Africa under the provisions of section2 of Defence Regulations (Amendment No.4) made on 25th October (sent to you by despatch No.129), Union authorities having agreed to receive him. Copy of the Order sent to you by my despatch of 9th January.

7. I informed you in my ~~XXXX~~ telegram 109 of 28th October that I had availed myself of an opportunity to transfer internees to South Africa. They were sent on 26th October. Your circular telegram 219 instructed me on 8th November for first time that transfer to a Dominion would require legislation and that in future no such transfer ~~XXXXX~~ should be made. Your circular despatch of 27th September

DECODE.

(68)

TELEGRAM. SENT.

From.....

To.....

Despatched : 19 *Time :*

Received : 19 *Time :*

No.10

2.

Referring and your /// telegram saving No.10 were received by me on the 16th /////// instant. I informed you on that date that I had no decypher.

8. I suggest that no action under Habeus Corpus Act can possibly lie against any persons in this Colony. No order issued or could have issued from the Colony for his detention in South Africa.

I.D.C.O.

Law Report, Oct. 22

HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

APPLICATIONS FOR WRITS OF HABEAS CORPUS

Before the LORD CHIEF JUSTICE, MR. JUSTICE HAWKE, *and* MR. JUSTICE HUMPHREYS

The COURT adjourned the application by Sir Barry Edward Domvile, and refused applications by Mr. Harold Henry Alexander de Laessoe, D.S.O., M.C.; Mrs. Rita Kathleen Shelmerdine, of Greenway, Wilmslow, Cheshire; Miss Emily Dorothea Vavasour Durell; and Mr. William Edric Sherston, detained in various of his Majesty's prisons, for writs of *habeas corpus*.

Mr. B. B. Stenham (for Mr. Gerald Gardiner) appeared for Sir Barry Domvile; Mr. Frederick Wallace and Mr. J. W. Williamson for the other applicants; the Attorney-General (Sir Donald Somervell, K.C.) and Mr. Valentine Holmes for the Crown.

Mr. STENHAM, applying that Sir Barry Domvile's application should be adjourned, said that his client was detained on July 12, 1940. On October 10, practically three months after his detention, his advisers had received particulars of the grounds for his detention, and an intimation that his objections to his detention would very soon be heard by the Advisory Committee to the Home Office. In those circumstances, and with the consent of the Crown, he (counsel) applied that the Court should adjourn the application generally with liberty to either party to apply to have it restored to the list.

The LORD CHIEF JUSTICE said that the application would be granted.

Mr. WALLACE, opening the remaining applications, said that all four persons concerned had been detained under regulation 18 B of the Defence (General) Regulations, 1939.

He (counsel) complained of the inordinate delays in affording to the applicants their rights under the regulation. They were loyal lieges of the Crown, and the regulation did not, he submitted, expressly or impliedly abrogate their right at common law or by statute to speedy trial before the appropriate tribunal.

MR. JUSTICE HUMPHREYS.—Speedy trial for what?

Mr. WALLACE said that speedy trial was desired of the allegations which the Crown was making against them.

The LORD CHIEF JUSTICE.—What is "the appropriate tribunal"?

Mr. WALLACE said that it was the advisory committee. If the procedure under regulation 18 B were delayed, then the only right which those parties had under the regulation would be denied to them. It was true that the detentions were not punitive but protective, and that to that extent the advisory committee were not, in the normal sense, a Court of law. Nevertheless it was the only tribunal to which those four loyal subjects could state their case. There was no procedure known to the law, except that by writ of *habeas corpus*, which could avail any subject of the Crown who was placed in detention by the Home Secretary.

MR. JUSTICE HUMPHREYS.—But there is no question of any right to be tried for any offence here. No offence has been alleged.

Mr. WALLACE submitted that the applicants had, under the regulation, a right to make objection to the advisory committee.

POWER OF THE EXECUTIVE

Even the two applicants who had received the grounds had a grievance which only proceedings by *habeas corpus* could remove. The Executive had been empowered by law to do certain things—namely, to deprive members of the public of their freedom in certain conditions. It was, he (counsel) submitted, a duty of the Court to inquire whether the subject's liberty was being interfered with in accordance with the law or not. And if the result of the regulations was that those persons were for 90 or 100 days detained without any form of redress, he asked the Court to declare that such delay was inordinate.

The LORD CHIEF JUSTICE.—Do you say that there has been so much delay in getting these cases before the advisory committee that the detention of these four applicants is illegal *ab initio*, or at any rate has become so.

Counsel said that that was his submission. In his submission, the Court ought to say that writs of *habeas corpus* should issue if within such time as seemed reasonable to the Court the applicants were not brought before the advisory committee and their cases heard.

The LORD CHIEF JUSTICE.—Then your application really is to have those proceedings hastened?

Mr. WALLACE said that that was so. Dealing with a doubt expressed by MR. JUSTICE HAWKE whether procedure by way of *habeas corpus* was appropriate to such an object, counsel contended that the basic guarantee of the liberty of the individual was the express provision in the Habeas Corpus Acts of a time within which he should be brought to trial. The regulation did not abrogate that right of the subject.

The LORD CHIEF JUSTICE said that he had great sympathy with the view that the machinery under the regulation should be made to work more quickly, but proceedings which had begun as applications for orders of *habeas corpus* had now become applications to hasten the procedure under Regulation 18B.

Mr. WALLACE said that his case was that the working of the regulation had been so dilatory that it amounted to a denial of justice. There was no means of getting the Home Secretary or the advisory committee to act except by coming to that Court. He (counsel) asked for an order of *habeas corpus* in order that the bodies of the applicants should be brought before the Court, and he asked that an order should follow for their release unless the procedure under the regulation were put into operation.

The ATTORNEY-GENERAL then referred to an affidavit by Sir John Anderson, in which he explained that the delay with regard to the applicants was due to the great number of similar cases which had to be dealt with, and that advisory committees were dealing with appeals in rotation; and to an affidavit sworn by Mr. Herbert Morrison since his taking office as Home Secretary in which he said that he was satisfied everything was being done to dispose of the cases with the utmost expedition, and that the cases of all the applicants would shortly come before the advisory committee.

Asked by the LORD CHIEF JUSTICE whether he was satisfied by that explanation, Mr. WALLACE said that the fact of the delays remained. If the Home Secretary were free to decide what was due expedition in such a matter and what was not, abuses might creep into the system. He submitted that when 90 days elapsed without anything being done the detained person had a grievance.

JUDGMENT

The LORD CHIEF JUSTICE, giving judgment, said that there was no ground for making an order of *habeas corpus*. The Court did not accept the contention that there had been a greater delay than there should have been. If the affidavits of the present Home Secretary and his predecessor were accepted there was no ground on which the applicants could contend that any rights had been denied to them.

Having said that, he wished to repeat that, in these cases of the liberty of the subject, it was essential that all possible expedition should be used. Nothing which he had said or was saying must be taken as reflecting on the Home Secretary or on the chairmen of the advisory committees which had been appointed, but he took the opportunity of once more putting on record the view which he believed that the Court would always take, that, when powers of that sort were exercised, it should be with due regard to the fact that the liberty of the subject was involved, the subject therefore being given the full rights contained in the regulation conferring on the Home Secretary the powers under which he acted.

MR. JUSTICE HAWKE and MR. JUSTICE HUMPHREYS agreed.

On the ATTORNEY-GENERAL'S asking for the dismissal of the applications, with costs, MR. JUSTICE HAWKE called attention to the fact that these proceedings would have the effect of allaying the anxieties of a great many people who were waiting to have their cases heard.

The ATTORNEY-GENERAL said that if their Lordships felt that it was reasonable to order that each side should bear its own costs, he would consent to such an order without formally agreeing to it.

In making no order as to costs, the LORD CHIEF JUSTICE said that he wished it to be understood that the taking of that course implied no reflection whatever on the Home Secretary.

Solicitors.—Messrs. Fowler, Legg and Co.; Messrs. Oswald Hickson, Collier and Co.; the Treasury Solicitor.

(7)

HALSBURY Volume 10.

Page 42.

Para. 94. A writ of habeas corpus is inapplicable if the illegal detention has ceased before application for the writ is made.

When it is clear that a person unlawfully detaining another has de facto ceased to have any custody or control the writ ought not to issue.

Page 46.

Para. 100. The Habeas Corpus Act 1862 enacts that no writ of habeas corpus shall issue out of England by authority of any English judge or court of justice into any Colony or foreign dominion of the Crown where the Crown has lawfully established courts of justice having authority to grant or issue the writ.

DECODE.

No. 417

TELEGRAM.

From Secretary of State.

To His Excellency the Governor, Falkland Islands.

Despatched : 22nd January *19* 41 *Time :*

Received : 22nd January *19* 41 *Time :* 10.30.

Important

Unnumbered Following is repetition of my telegram No.10 Saving 1940 Begins.

Your despatch 20th July Hamm. I agree that it is preferable that person named should not be removed to United Kingdom for the present but should be grateful for further information as to the precise character of his Falkland Islands + activities to which reference is made in paragraph 6 of your despatch.

+ Word omitted in telegram presumably activities.

G.T.C.

Stanley.
22-10-40.

73

Officer Commanding,
Falkland Islands Defence Force.
Stanley.

Sir,

I beg to apply for permission to transact the following items of business before leaving the Falkland Islands:

1. Make arrangements for the transfer of the money standing to my account in the Government Savings Bank, and enquire as to whether I have been credited with salary for the first 11 days of June, i.e. up to the date of the termination of my engagement.
2. Cash at the Post Office a Money Order for £1, in my possession.
3. Make some purchases at a store.
4. Re-cover my type-writer.
5. Arrange for some children's books to be sent out to the camp.

Thanking you in anticipation,

I remain,

Sir,

Yours faithfully,

E. J. Hamm.

Stanley.

26-8-40.

75

Commanding Officer Falkland Island Defence Force.
Stanley.

Sir,

I thank you for your letter of the 23rd. inst. and of your replies to the five points of my letter of the 18th. I would say:

1. I should be grateful if arrangements could be made for me to be interned under more favorable conditions, for any reason.

2. I would not expect green vegetables if these are not procurable, but I should be extremely grateful if my rations could be augmented from the stocks of such vegetables as are procurable. I was sorry to hear that you personally have had no green vegetables for several weeks, and I would be grateful if you would accept the enclosed peas and beans, of which we have more than sufficient.

74

3. I would be extremely grateful if you could provide me with news bulletins.

4. My statements in connection with fuel supply were strictly accurate.

5. The Rev. G. K. Lowe has not seen me on the point of my application to attend Church. When he was aboard the "Pennia" I had not made such an application as I was under the impression that my case was still being considered, and felt confident of an early release. I told Capt. Lowe this, and we had no further conversation on this point. I feel profoundly dissatisfied at the rejection of my application.

I remain,

Sir,

Yours faithfully,

E. J. Hamm.

76 D/F

No.

(It is requested that, in any reference to this minute, the above Number and the date may be quoted).

MINUTE.

23rd August, 1940.

From The Officer Commanding,
Falkland Islands
Defence Force,
Stanley, Falkland Islands.

To E. J. Hamm, Esq.,
Stanley,
Falkland Islands.

I am in receipt of your letter of the 18th inst., and have to inform you as follows with regard to the five points you raise.

1. As there is not at the moment any alternative accomodation for internees it is not possible for you to be interned ashore. The administrative side of your internment would be much simpler if you could be interned ashore and some arrangement may be made in the near future, for this reason.

2. Your rations are as nearly as possible the same scale as laid down for the Defence Force on outpost. You are at liberty to augment them personally as the troops do should you so wish. I personally have had no green vegetables for several weeks now as they are not procurable.

3. I will see what can be done as to news bulletins.

4. Adequate fuel supply has been issued and your statements in this connection are not strictly accurate.

5. It is not possible for you to attend Church Services. The Rev. Lowe has seen you on this point I beleive.

Major,
Officer Commanding,
Falkland Islands Defence Force.

Fennia.
Stanley.
21-7-40.

77

The Commanding Officer Defence Force
Stanley.

Sir,

I beg to apply for permission to attend Church services (particularly those of Holy Communion) at such times as may be convenient.

Thanking you in anticipation,
I am,
Sir,
Yours respectfully,
E. J. Hamm.

appeal to you

78 X24

HEADQUARTERS,

FALKLAND ISLANDS DEFENCE FORCE,

STANLEY.

Mr. E. J. Mann,

"Fennia"

In reply to the request contained in your letter of the 21st inst., I have to inform you that the matter has been referred for instruction, and I will communicate with you in due course. I would point out however that you must anticipate some loss of spiritual as well as physical comfort while in detention.

Major.
Officer Commanding,
Falkland Islands Defence Force.

Pennia.
13-9-40.

(80)

...commanding,
...nd Islands Defence Force.

...ley.

Sir,

I have been informed of your order forbidding me to display in my sleeping-quarters a photograph of Oswald Mosley.

I would point out that this photograph was not wantonly displayed to the annoyance of anyone whose feelings might be injured by the sight of such a photograph. On the contrary, I reserved it for my personal encouragement during the somewhat trying days of my internment. In view of the fact that I am interned because of my association with Mosley, a man who served his country with distinction during the last war, and has devoted his whole life to its service, you will appreciate the value I place upon this small concession. I therefore ask you to grant me permission to restore the photograph to its former position.

You will ~~now~~ have had an opportunity of verifying my statement that the Rev. G. K. Lowe had not discussed with me the question of church attendance. I therefore appeal to you once more to grant me permission to attend Church services, particularly those of Holy Communion.

of hiring a boat presents difficulty, I am
pay the cost of this.

I wish to refer once again to the
on of news bulletins. It is intolerable that I should
denied even this small concession.

The question of my continued detention is one I am determined to press, and I propose to appeal shortly to His Majesty's Secretary of State for the Colonies. I wish to inform you that I propose to include in this appeal a vigorous protest against the manner in which you have treated me. You were well aware that the purpose of the section under which I am detained was to prevent action by a movement alleged to be in sympathy with a foreign power. This mythical action could have been frustrated, and the more ignorant section of the community suitably impressed, if I had been interned under humane conditions. You, however, considered it necessary to intern me under conditions harmful to both my physical and mental well-being, in the company of two aliens, and to deny me the right to attend Church, a right enjoyed even by a convicted criminal.

I am,
Sir,
Yours faithfully,
E. J. Hamm.

(81)

Honourable Colonial Secretary

May the attached letters be kept with other correspondence from Hanna on the subject please.

O.C.D.F
25/1/41

DECODE.

TELEGRAM.

From High Commissioner, South Africa.

To His Excellency the Governor.

Despatched: 28th January, *19* 41. *Time*: 1858.

Received: 28th January, *19* 41. *Time*: .....

Addressed to Dominions Office 111 repeated to the Governor of Falkland Islands Q 59 with reference to my telegram No. 60. Hamm. I have now received through the Union Authorities letter to Secretary of State for the Colonies from person named. Letter alleges (i) that he addressed appeal to Secretary of State in October through the Governor but that the latter declined to forward the appeal and returned it. (2) Have learnt appeal in question protested against internment on the ground that it was against public interest that statement of case against him was not supplied, that the right to call witnesses for defence was not granted et cetera (generally as in Paragraph 2 of my telegram No. 18 January 6th) letter goes on to ask for reference at which he could appear with legal adviser, with a view to release and financial compensation miscarriage of justice.

I should be glad to learn what action Secretary of State for Colonies would wish me to take.

HIGH COMMISSIONER.

C.O. 1.

DECODE.

TELEGRAM.

From Secretary of State for the Colonies,

To His Excellency the Governor.

Despatched: 16th March, *19* 41. *Time:* 2126.

Received: 16th March, *19* 41. *Time:* 1030.

Rec'd 69

No. 32. Secret. With reference to your telegram No. 10 Union Authorities have been informed provided they see no objection Hamm may be released and sent back to the United Kingdom. As regards Paragraph 8 of your telegram I am advised that Section No. 2 Defence Regulations (Amendment No. 4) is ultra vires the provisions of Emergency Powers (Defence) Act, 1939.

Rec'd 31
5/7/39.

SECRETARY OF STATE.

I.D.C.O.

(84)

DECODE.

TELEGRAM.

From Secretary of State for the Colonies,

To His Excellency the Governor.

Despatched: 18th July, *19* 41. *Time:* 1450.

Received: 19th July, *19* 41. *Time:* 1030.

Rec'd 83.

No. 81. With reference to my telegram No. 32 Secret In order to enable me to deal with representations from person named please telegraph whether appointment in the Falkland Islands was formally terminated under clause No. 6 agreement and material to enable me to reply to complaint that he was interned under excessively harsh conditions, confined for four months on a ship, denied exercise and not allowed to attend church. Please also furnish by despatch statement of evidence available to Advisory Committee and source from which it was drawn which led Committee to conclude he was using his position as a teacher to spread doctrine amongst school children.

SECRETARY OF STATE.

G.T.C.

DECODE.

(85)

TELEGRAM.

From His Excellency the Governor,

To Secretary of State for the Colonies.

Despatched: 21st July, *19* 41. *Time*: ...

Received: ... ...*19* ... *Time*: ...

No. 92. Your telegram No. 81 appointment of person named was formally terminated on July 24th under Clause 6 of the agreement with effect from June 11th. There were no excessively hard conditions his treatment being the same as for other internees. He was confined with the others on board a ship until a building could be prepared for them on shore as the only alternative was the local gaol. Every facility for exercise was given him and when weather conditions were favourable he came ashore for exercise. The period on board the ship was from June 6th until September 22nd. He was regularly visited by Church of England Chaplain who had access to him at all times and the Chaplain informs me that he was a regular communicant at the cathedral missing so far as he can remember only three Sundays during the whole period of his detention. Despatch asked for will follow as soon as possible.

GOVERNOR.

G.T.C.

DECODE.

TELEGRAM.

From Secretary of State for the Colonies.

To His Excellency the Governor.

Despatched: 26th August, *19* 41. *Time:* 1625.

Received: 28th August, *19* 41 *Time:* 1030.

Rec'd 8th No 94. With reference to your telegram No. 92 substance was communicated to person named who has now made the following points in reply :- (1) For 9 weeks was allowed to leave internment ship once a week only and then only for a bath.

2. Was visited on one occasion only by the Chaplain and though arrested on June 3rd was not allowed to attend Church until October. Is in possession of 2 letters from Woodgate Officer Commanding Defence Force stating he "must be prepared to suffer some loss of spiritual comfort as well as physical" and that it was "not possible" for him to attend Church.

3. Made an appeal in triplicate to the Secretary of State which was shown to Sollner and several privates of Defence Force and which was returned to him by O.C. Defence Force who stated that he had no further right of appeal.

Please expand despatch promised in your telegram so as to cover these points and also to contain fullest possible information to supplement that already in my possession regarding reason for internment. Copies of correspondence with the person named follows by by mail.

G.T.C.

Secretary of State.

GOVERNMENT HOUSE,

FALKLAND ISLANDS. STANLEY,

S E C R E T. 4th September, 1941.

Reds 84 & 86

Red 85

Red 37

My Lord,

With reference to your telegrams, Nos. 81 of the 18th July and 94 of the 26th August and to my telegram, No. 92 of the 21st July, 1941, on the subject of the internment of Mr. E. J. Hamm, Travelling Teacher, I have the honour to inform you that no direct evidence was available to the Advisory Committee but it was common knowledge that this man was using his position as a teacher to spread fascist doctrines amongst farm workers and children. Exhibit 'D' which formed an enclosure to Sir Henniker-Heaton's Secret despatch of the 20th July, 1940, would appear to bear out Hamm's intentions in this regard.

2. The N.C.O. of the Defence Force detailed to detain and escort Hamm from the Camp to Stanley reported that the people in the Camp were not at all surprised when they heard that the person in question had been detained. He also stated that it was known throughout the Camp that Hamm refused to listen to the English news preferring the German or any other foreign or anti-British news. It was known too that as a result of his disloyal attitude he had received a thrashing at the hands of one of the Camp workers. Similar incidents took place in Stanley and on board the vessel which conveyed him from the Colony to South Africa when he became involved with a member of the crew.

3. Hamm was a source of trouble during the whole of his period of detention. He complained of

THE RIGHT HONOURABLE
LORD MOYNE, P.C., D.S.O.,
SECRETARY OF STATE FOR THE COLONIES.

his/

his quarters, sleeping accommodation and food. His statements in every case were much exaggerated. He was supplied with rations the same as the other internees based on the same scale as members of the Falkland Islands Defence Force who acted as his guard. It may be of interest to record that on one occasion after complaining about the lack of vegetables, he was told by the Officer Commanding Troops that the latter too could not procure them most days. Hamm replied by sending ashore some peas and beans to help the Officer out !

4. When giving evidence before the Advisory Committee, not on oath, he at first denied his intention, after leaving Great Britain, of continuing his membership with the Fascists - but faced with the documents already in your possession, admitted this was wrong. Prevarication and equivocation permeated the whole of his statement, which was not taken down in writing as the Committee considered they were not a Court but merely an Advisory body.

The overwhelming nature of the documentary evidence, the almost insolent attitude of the man before the Committee, and the general knowledge of his activities which had angered the people, and the contents of your Secret despatch of 15th April were such that the Advisory Committee could not possibly come to any other decision other than to support the Governor's intention to intern him.

In that despatch it was written that Hamm "is stated to have said that he intended to further the movement in the Falkland Islands". Documentary proof of that has been sent you, and confirms his then intentions. The attitude of the public made it abundantly clear that he had been at his subversive work.

5. From the nature of his occupation he was never/

never away from the children under his care [illegible] pro-Moseley and anti-British talk, resented by the parents to the extent of arousing violence, was inevitably heard and listened to by those children who have no other room as a rule than the living-room of the cottage. The wife of one of the men in whose home Hamm was staying ordered Hamm to stop talking or she would have him thrown out-of-doors in spite of the weather and threatened to refuse to cook for him. The Committee did not know of this incident as it only came to light later.

6. I attach a copy of a letter written by Hamm to the Colonial Secretary. The statements therein when compared with the notes of evidence before the Advisory Committee forwarded you go to show Hamm's bent towards lying (c.f. the last paragraph but two with his explanation about his connection with Fraulein Fritz in Exhibit 2 - the address book.)

Enclosure No. I.
Red 2,3.

7. I attach a minute written by myself as Colonial Secretary to the Governor which may be pertinent.

Enclosure No. II.
Sheet I.

8. I attach a copy of a letter addressed by Hamm to the Governor, undated. The third paragraph is, as shown in the evidence submitted to you, not true vide Exhibit "H".

Enclosure No. III.
Red 15.

9. Detention on the "Femnia" was by no means so severe as Hamm makes out. The alternative was the gaol, and as soon as it was possible a building on the Race Course, used as the Sports Association's Store and Offices, was prepared.

10. As for exercise, Hamm's own remarks in his letter to the Officer Commanding Defence Force about weather conditions is an answer. The deck of the "Femnia" is as in all sailing vessels of her size,

con

some 1,600 tons, [illegible]e and far greater in space than on a steam vessel of 10,000 tons. Incidentally one could from my home hear the running and other exercises enjoyed by the detainees, and to judge from the nightly sessions of jazz the evenings were not unsocial.

Arrangements were made for warm baths once a week in the Public Baths at Stanley and the opportunity for other exercise when favourable weather obtained was then taken.

11. As soon as the request was made arrangements were made for church attendance and the Chaplain's statement has been telegraphed you. For obvious reasons if he attended the early service a boat could not be provided for a second attendance.

I attach a copy of a letter from Hamm to the Officer Commanding Defence Force.

Enclosure No. IV.

Red 75.

The question of "news bulletins" was insoluble. None are issued here except over a telephone diffusion from London to subscribers, and the local news is purely local in character printed on a mimeograph machine and contains no World news.

12. In a letter to the Officer Commanding Defence Force dated 13th September, Hamm mentions his intention to submit an appeal to the Secretary of State but no such appeal appears ever to have been received - certainly not in the Secretariat. But the Officer Commanding Defence Force remembers Hamm discussing the idea with him and advised Hamm of the course to take.

Red 80

Hamm left the Colony, without presenting such a petition, on October 26th.

I have the honour to be,

My Lord,

Your Lordship's most obedient, humble servant,

(Sgd.) A. W. CAMPBELL

(a!)

Law Report, June 26 1941

HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ACTION AGAINST A FORMER AND THE PRESENT HOME SECRETARY
STUART v. ANDERSON AND ANOTHER

Before MR. JUSTICE TUCKER

The hearing was dismissed in the action in which Mr. John Roland Smeaton Stuart claimed damages for alleged false imprisonment from Sir John Anderson, Home Secretary until October, 1940, and Mr. Herbert Morrison, Home Secretary thereafter.

Mr. Stuart's case was that on May 30, 1940, Sir John Anderson, purporting to act under paragraph 1A of regulation 18B of the Defence (General) Regulations, 1939, made an order for his detention on the grounds, stated in it, that the Home Secretary had reasonable cause to believe that those named in the schedule to the order had been or were members of, or active in the furtherance of the objects of an organization with regard to which the Minister was satisfied—

(*a*) That those in control of the organization had or had had associations with persons concerned in the Government of, or sympathies with the system of government of, a Power with which his Majesty was at war, and (*b*) that there was a danger of the utilization of the organization for purposes prejudicial to the public safety, the defence of the realm, the maintenance of public order, the efficient prosecution of the war, or the maintenance of supplies or services essential to the life of the community.

Mr. Stuart complained that he was, on June 4, 1940, arrested by police officers and detained until November 15, 1940, his detention up to October 3, 1940, being caused by Sir John Anderson, and after that date by Mr. Herbert Morrison. He said that his arrest and detention were without lawful justification.

The defendants denied that the detention order of May 30, 1940, or Mr. Stuart's arrest and detention were without lawful justification.

Mr. F. W. Wallace and Mr. Williamson appeared for Mr. Stuart; the Attorney-General (Sir Donald Somervell, K.C.) and Mr. Valentine Holmes for the defendants.

The ATTORNEY-GENERAL, opening the defence, said that it was plain from the wording of regulation 18B and the Act under which the Defence Regulations were made that the Home Secretary was made the judge in these matters, and that on him rested the responsibility. To suggest that any person detained could, by bringing a false imprisonment action, place the onus on the Home Secretary so as to make him particularize and place before the Court the materials on which he had acted, the Court judging whether he had had reasonable cause for his actions, would be in direct conflict with the Act and the regulations. It would place on the Court a duty which Parliament clearly did not intend, and would infringe the principles on which the constitution was based. The exercise of the wide discretionary powers conferred by regulation 18B must lie on the shoulders of someone responsible to Parliament. To place the burden of exercising those discretionary powers on the Judiciary would be wrong. Counsel referred to *Ex parte* Lees (57 *The Times* L.R. 68; [1941] 1 K.B. 72).

Mr. Stuart's evidence, even without cross-examination, disclosed nothing to shift the onus of proof. Each case must be judged on its facts, but it was not enough to shift the onus for the plaintiff to come to the Court and give evidence that the Home Secretary ought not to have suspected him. That, if it were enough, would make the Court a Court of Appeal in every case where a detained person went into the witness-box and said that he was a loyal citizen who ought not to have been suspected.

The ATTORNEY-GENERAL submitted that, unless there had been anything to shift the onus of proof, and he contended that there had not, Mr. Stuart's case failed on his main point—namely, absence of reasonable cause. Mr. Stuart was presented as a person who had sown some Fascist wild oats four years ago, and had since completely repudiated Fascist doctrines and become a Conservative. He (counsel) submitted that that was not true, and that Mr. Stuart's own evidence in chief showed it. Mr. Stuart had admitted that he remained to a great extent a supporter of National-Socialist views. In a letter which Mr. Stuart wrote to Sir Oswald Mosley at the time of his resignation he had said that he remained, with his friends, a loyal repository of Fascist or National-Socialist ideals, and that his real quarrel was with the way in which the organization of the British Union was run.

It was, counsel submitted, perfectly plain on the evidence that Mr. Stuart was a man in sympathy with the objects of the British Union of Fascists, and that, although he ceased to be a member because he quarrelled with the organization, he continued active in promoting National Socialism, and the anti-war and pro-German part of its activities.

Evidence was then given for the defendants that the decision to dismiss Mr. Stuart from his employment was taken by an official of the petrol company employing him who did not know at the time that Mr. Stuart had been detained.

Mr. WALLACE, addressing his Lordship, submitted that the onus must be on the defendants to show that Mr. Stuart's detention was lawful. The evidence, he submitted, in any case revealed facts which had the effect of shifting the onus back on to the defendants.

JUDGMENT

MR. JUSTICE TUCKER, giving judgment, said that, in a recent interlocutory appeal in an action brought against the same defendants as in the present action, the Court had intimated that the onus did not lie on the defendants to prove the various facts alleged in the order, or that the Home Secretary had reasonable cause for belief that it was necessary to exercise control over the detained person. In the present case, if Mr. Stuart merely proved his detention, and the defendants then proved that he was detained by an order made in pursuance of the regulation, there must be judgment for the defendants. The defendants had produced an order made by the Home Secretary purporting to be made under regulation 18B. Mr. Wallace said that he had established matters which in any case shifted the onus of proof back to the defendants. If the Home Secretary had produced an order which was bad on the face of it, it would follow that he had not sufficiently discharged any onus which might lie on him.

His LORDSHIP, having decided against a contention, raised by Mr. Stuart, on an amendment of his statement of claim, that the detention order was bad because it was a general order in which a series of alternative allegations had been made against more than 300 persons and not directed to the particular case of the plaintiff, said that regulation 18B made it clear that the person to decide matters arising under it was not to be any *ad hoc* tribunal or any of his Majesty's Judges, but the Home Secretary himself. The Court had no jurisdiction to sit as an appellate tribunal on any decision reached by the Home Secretary, much less had it any power to try any such case itself to see whether it would have come to the same conclusion as the Home Secretary. It had, nevertheless, the right under its *habeas corpus* jurisdiction to see that the powers conferred on the Home Secretary by the regulation were properly exercised.

It was sought by the action to invite the Court to go beyond that and to inquire into the case on its merits and ascertain whether or not there was reasonable cause for the belief that it was necessary to detain Mr. Stuart. The Court had in his (his Lordship's) opinion no jurisdiction to embark on any such inquiry. Mr. Stuart must satisfy the Court that the order for his detention was wrongly made on the ground of some irregularity in it, with the addition that it was open to him to establish that the Home Secretary had failed to apply his mind to one of the matters essential under regulation 18B, in which case he would have a claim for damages.

His LORDSHIP, having reviewed the evidence on the point, said that he was quite unable to reach the conclusion that the Home Secretary had failed to apply his mind to the question whether it was necessary to exercise control over Mr. Stuart. In a proper case it might be sufficient proof that the Home Secretary had so applied his mind to establish no more than that the detained person had been a member of the British Union. It would depend on the particular facts—for example, the part which a detained person had played in that organization. It was not necessary for the Home Secretary to be satisfied that Mr. Stuart, after leaving the British Union, had been a party to some overt act rendering it necessary to exercise control over him. There was clearly evidence on which the defendants had been entitled to exercise their discretion as they had exercised it. There would be judgment for the defendants, with costs.

Solicitors.—Messrs. Oswald Hickson, Collier and Co.; the Treasury Solicitor.

Law Report, July 2

HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
CAPTAIN C. H. B. BUDD: WRIT OF HABEAS CORPUS REFUSED
REX v. HOME SECRETARY—EX PARTE BUDD

Before the LORD CHIEF JUSTICE, MR. JUSTICE MACNAGHTEN, *and* MR. JUSTICE STABLE

The COURT, by a majority, Mr. Justice Stable dissenting, dismissed the application of Captain Charles Henry Bentinck Budd, R.E., for a writ of *habeas corpus*.

Captain Budd had been previously detained under regulation 18B of the Defence Regulations by an order made by Sir John Anderson, the then Home Secretary, in June, 1940. He was granted a writ of *habeas corpus* and was released (as reported in *The Times* of May 28 last) by an order of the Court made on May 27. He was rearrested on June 5 on an order of that date made by the present Home Secretary, Mr. Herbert Morrison. Captain Budd applied for a further writ of *habeas corpus* (as reported in *The Times* of June 11).

Mr. J. Scott Henderson appeared for the applicant; the Attorney-General (Sir Donald Somervell, K.C.) and Mr. Valentine Holmes for the Home Secretary.

JUDGMENT

The LORD CHIEF JUSTICE, in a written judgment, said that the case raised questions of first importance affecting not only the applicant and the duties and powers of the Secretary of State but also the public safety. The fact that it was not an isolated case, but in some degree was likely to determine the rights of a number of other British subjects at present deprived of their liberty, made the questions even more deserving, if possible, of the gravest consideration.

His LORDSHIP, having reviewed the facts in connexion with the previous detention of Captain Budd and his release as the result of proceedings by way of application for a writ of *habeas corpus*, said that a few days after Captain Budd's release a fresh order was made by the present Home Secretary, Mr. Herbert Morrison, that the applicant should be detained.

A true copy of that order was handed to the applicant when rearrested on June 6. The present application was based on four grounds: first, that the Home Secretary had no reasonable cause for thinking that it was necessary to exercise control over the applicant; secondly, that there had been a failure to comply with the requirements of regulation 18B (4); thirdly, that the Home Secretary had no reasonable cause for being satisfied that the British Union of Fascists (the organization referred to in the order) was an organization of the character described in regulation 18B (1A); and, lastly, that it was illegal to arrest the applicant on the same grounds as those on which he was arrested on the first occasion, the Court having already ordered his release.

The Court of Appeal had said that it was not the function of the Court to act as a Court of Appeal from the discretionary decision which had to be made by the Secretary of State. Captain Budd had sworn an affidavit in which he said that no further information beyond that contained in the Secretary of State's order handed to him on June 6 had been given to him, and that he could not make the representations authorized to the Secretary of State unless he was informed of the precise grounds on which the Home Secretary was satisfied that it was necessary to exercise control over him. He said that he had done nothing which would give any ground to the Home Secretary to think that it was necessary to exercise such control. The Home Secretary, in his affidavit in reply, said that, when he made the order of detention, he had reasonable cause to believe the facts set out therein.

If the Court were to enter on an inquiry as to the truth of the denials by the applicant of any acts in furtherance of or in sympathy with the object of the British Union of Fascists, they would be engaged on precisely that investigation which the Court of Appeal said was not the function of that Court.

If on the face of the order it was apparent that the Secretary of State had not reasonable cause for his belief, or if the Court were not satisfied that the Home Secretary had reasonable cause for his belief, there would be no valid ground for the detention of the applicant. On the present application he (the Lord Chief Justice) saw no reason to doubt that the Home Secretary had given proper and careful consideration to the case and had considered reports and information which appeared to him (the Home Secretary) to justify his belief.

Of the four conditions required by regulation 18B (IA), two seemed to him (the Lord Chief Justice) to have been clearly satisfied. The first was that the Secretary of State had reasonable cause to believe that the applicant had been a member of the British Union of Fascists; the second, that the Secretary of State was satisfied on proper material that the union was an organization of the character mentioned in 18B (1A). The other two were, first, that the Secretary of State was to be satisfied that there was a danger of the utilization of the organization for purposes prejudicial to the public safety; and, secondly, that the Secretary of State had reasonable cause to believe that it was necessary to exercise reasonable control over the applicant. The Secretary of State had declared on oath, as well as stated in the order, that he was satisfied as to the first of those conditions, and, as to the second, that he was satisfied, or had reasonable cause to believe, that it was necessary to exercise control over the applicant. It was said that the applicant had not been furnished with the precise grounds of his detention, but in his (the Lord Chief Justice's opinion he had so been furnished on this application, though he was not so furnished on the first proceedings. That being so, as he (the Lord Chief Justice) was not aware of any reason for thinking that the statement of the Home Secretary could not be accepted, he had come to the conclusion that when the Home Secretary made the order he had reasonable cause to believe as he did.

With regard to the contention that it was illegal to rearrest the applicant on the same grounds as those on which he was arrested on the first occasion, the Court having already ordered his release, in his (the Lord Chief Justice's) opinion it was lawful to make a second order for the applicant's detention in such circumstances and in such proper form as to admit of a different result. He also thought that in any case the second detention was not for the same cause as the first.

On the whole, therefore, he held that the answer of the Home Secretary to the application was sufficient, and that there was no ground on which they ought to find the detention of the applicant illegal.

Mr. Justice Macnaghten had asked him to say that he had read the judgment which had been delivered and concurred in it.

MR. JUSTICE STABLE'S VIEW

MR. JUSTICE STABLE, in a dissenting judgment, said that while agreeing in substance with the statement by the Lord Chief Justice of the principles which regulated that Court in dealing with applications of that kind, his divergence from the views expressed was more as to the application of the principles than the principles themselves. The only questions for the Court to determine were:—(1) Did the Secretary of State hold a particular belief? (2) Was there reasonable cause for this belief? And (which is an ancillary matter) (3), what material in this particular case ought to be before the Court to enable it to provide the proper answer to the first and second questions?

With regard to the first question, he did not doubt that the Secretary of State entertained the belief on which he acted. On the question of reasonable belief, the Court of Appeal had said that no general rule could be laid down for deciding the question, whether the Secretary of State had reasonable suspicion for his belief, and that each case must be decided on its own facts.

In the particular circumstances of the case he (his Lordship) found the material before the Court insufficient to enable him to come to a conclusion one way or the other as to the existence of reasonable cause. In his opinion, if the matter came to be determined on such material as they now had Captain Budd should be released.

In conclusion, MR. JUSTICE STABLE said that, being in ignorance of any fact relied on as constituting reasonable cause for the belief which was the foundation for Captain Budd's detention other than the facts, such as they were, which were before the Court in the earlier proceedings, the sufficiency of which were doubted by two members of the Court, he was unable to say that he was satisfied of the existence of reasonable cause for the belief entertained by the Secretary of State, and that accordingly Captain Budd was in his (his Lordship's) opinion entitled to be restored to liberty.

Solicitors.—Messrs. Oswald Hickson, Collier and Co.; Treasury Solicitor.

COPY.

(93)

Colonial Office,
Downing Street,
S.W.1.

13122/3(9)/41. 28 August, 1941.

Sir,

With reference to your letter of the 16th of August on the subject of your internment in the Falkland Islands, I am directed by Lord Moyne to inform you that a copy of your letter is being sent to the Governor of the Falkland Islands for his comments.

I am, &c.

(Signed) J.A. CALDER.

E.J. HAMM, ESQ.

COPY.

90 Thornton Rd.,
Morecambe,
Lancs.

16-8-41.

Under-Secretary of State,
Colonial Office,
London, S.W.1.

Your Ref: 13122/3(9)/41.

Sir,

I thank you for your letters of the 18th and 28th July, replying to my questions re. my arrest and internment in the Falkland Islands. I should be grateful if you would convey to Lord Moyne my appreciation of the steps he has taken to obtain from the Falkland Islands a report on the subject-matter of my allegations. Unfortunately, Lord Moyne has been grossly mis-informed, and any reports which he has received can be described only as the most blatant exhibition of lying it has ever been my misfortune to encounter.

His Excellency the Governor of the Falkland Islands is obviously relying upon the information supplied to him by Mr. Cardinall, and it is the latter whom I accuse of submitting reports which bear to ressemblance to the truth. I would quote the three following instances:

1. Mr. Cardinall states that I was given every facility for exercise. I can call witnesses to prove that for 9 weeks I was allowed to leave the internment ship once a week only, and then only for a bath.

2. Mr. Cardinall states that I was regularly visited by a Chaplain, who is alleged to have reported that I attended Holy Communicant every Sunday except three. I was visited on one occasion only by the Chaplain, and although I was arrested on June 3rd. I was not allowed to attend Church until October. I cannot believe that a Clerk in Holy Orders would disgrace his calling by lying in this manner and I am forced to the conclusion that Mr. Cardinall must

be

be given the credit for this too. In support of my statements I am able to produce two letters from Major Austin Woodgate, Officer Commanding Falkland Islands Defence Force. In one he states that I "must be prepared to suffer some loss of spiritual comfort as well as physical", and in the other that it was "not possible" for me to attend Church.

3. Lord Moyne has been informed that it is untrue that I was refused the right to appeal to the Secretary of State. In accordance with Colonial Regulations I made an appeal in triplicate. This appeal was shown to Andreas Sollner (a German national now interned in Andalusia Internment Camp, South Africa,) and to several privates of the Falkland Islands Defence Force, before being handed to one of the latter. It was returned to me by the Officer Commanding, who informed me that I had no further right of appeal.

I trust that I have supplied sufficient evidence to justify a further inquiry into my allegations. If Lord Moyne is not prepared to take this course, I should be grateful if I might be so informed as soon as possible, so that I may instruct my solicitors to take action on my behalf.

Thanking you in anticipation,

I remain,

Sir,

Yours faithfully,

(Signed) E.J. HAMM.

COPY.

13122/3(9)/41.

Colonial Office,
Downing Street,
S.W.1.

95.

28 July, 1941.

Sir,

With further reference to the letter from this Department of the 18th July, I am directed by Lord Moyne to inform you that a reply has now been received from the Acting Governor of the Falkland Islands on the subject of the statements made in sub-paragraph 3 of the third paragraph of your letter of the 18th June.

2. Mr. Cardinall states that the treatment accorded to you during the period of your detention in the Colony was the same as for other internees, and that your confinement on board a ship last only until a building could be prepared for use as an internment camp on shore, since the only alternative was that persons detained under the Defence Regulations should be imprisoned in the local goal. The Acting Governor further states that every facility for exercise was given you and that you were regularly visited by a Church of England chaplain, who has stated that you were a regular communicant at the cathedral and that during the whole period of your detention, so far as he can remember, there were only three Sundays on which you did not attend.

I am, &c.,

(Signed) K.E.ROBINSON.

E.J. HAMM, ESQ.

COPY.

Colonial Office,
Downing Street,
S.W.1.

96

13122/3(9)/41.

18 July, 1941.

Sir,

I am directed by Lord Moyne to acknowledge the receipt of your letter of the 18th of June and to inform you that the answers to the questions asked in the last paragraph of that letter are as follows:-

(1) You were arrested and interned on an Order made by the Governor of the Falkland Islands under the Falkland Islands Defence Regulations.

(2) The Governor of the Falkland Islands has been consulted and has reported that he was satisfied that the hearing of your case before the Advisory Committee was most fairly conducted.

(3) The Secretary of State is in communication with the Governor as regards the complaint that you were interned under excessively harsh conditions and a further letter will be sent to you in due course.

(4) Lord Moyne has been informed that it is untrue that you were refused the right to appeal to the Secretary of State.

(5) The Governor has reported that you were sent to the Union of South Africa under an Orde made by him in accordance with Sub-Section 1 of Regulation 17 of the Falkland Islands Defence Regulations as amended by the

Falkland

E.J. HAMM, ESq.

Falkland Islands Defence (Amendment)
(No.4) Regulations, 1940.

(6) Lord Moyne cannot see his way to offer you further employment in the Colonial Service.

I am, &c.,

(Signed) K.E. ROBINSON.

COPY.

90 Thornton Rd.
Morecambe.
Lancashire.

His Majesty's Principal Secretary of State for the Colonies.
The Colonial Office.
Whitehall.
LONDON.S.W.1.

Sir,

I am anxious to obtain further information concerning my case (which has been referred to you), and I therefore beg to remind you of the relevant facts.

In December 1939 I was selected by the Crown Agents for the Colonies for appointment as a Travelling Teacher to the Falkland Islands. I left England in January 1940 and arrived in the Colony in February. I carried out my duties as Travelling Teacher until June 3rd., 1940, when I was arrested and interned on the grounds that I had been a member of the British Union of Fascists. In October I was transferred to an internment in South Africa. On 1st. May, 1941, on your recommendation, I was released and provided with a passage to the United Kingdom, where I arrived on June 15th.

I would be extremely grateful if you could inform me:

1. On whose instructions I was arrested and interned.

2. What steps have been taken or will be taken to inquire into my allegation that the Colonial Secretary to the Falkland Islands exhibited personal bias against me and conducted the hearing of my appeal in a manner prejudicial to the administration of justice.

3. On whose authority I was interned in the Falkland Islands under excessively harsh conditions, being confined for four months on a ship and denied exercise and even the right to attend Church.

4. On whose authority the Colonial Secretary to the Falkland Islands refused to forward to you an appeal I made in accordance with Colonial Regulations.

5. On whose authority I, a British Subject by birth, was transferred to a German internment camp in South Africa, and there detained for over five months.

6. What is the Government's attitude to my re-instatement in the Colonial Service.

Thanking you in anticipation,
I remain,
Sir,
Your humble and obedient servant,

(Signed) E.J. HAMM.

Falkland Islands. S/34/40

Despatch No. 43

Reference:-

Secretary of State's ~~Governor's~~ Telegram ~~Despatch~~ No. 94 of 26th. August, 1941.

Received

Transmitted, with the Compliments of The Secretary of State,

the Governor's information.

for ~~the Governor's~~ consideration.

~~favour of the Governor's observations~~.

COLONIAL SECRETARY'S OFFICE 19 NOV. 1941 FALKLAND ISLANDS

Date. 5 September, 1941

Enclosures.	
Date	~~To or from~~
Undated	From Mr. E. J. Hamm.
18th. July 1941.	To " " " "
28th. July 1941.	To " " " "
16th. August 1941	From " " " "
28th. August 1941.	To " " " "

Law Report, Sept. 18

HOUSE OF LORDS

REGULATION 18B : ONUS OF PROOF
LIVERSIDGE v. ANDERSON AND ANOTHER

Before LORD MAUGHAM, LORD ATKIN, LORD MACMILLAN, LORD WRIGHT, *and* LORD ROMER

The HOUSE began the hearing of this appeal by Mr. Robert William Liversidge, of St. James's Close, Regent's Park, N.W., and of Brixton Prison, from a decision of the Court of Appeal (Lord Justice MacKinnon, Lord Justice Luxmoore, and Lord Justice du Parcq) dated June 20, 1941, upholding, on an interlocutory appeal, a decision in Chambers of Mr. Justice Tucker, who had affirmed a refusal of Master Moseley to order the defendants to an action brought by Mr. Liversidge to give certain particulars of the defence.

Mr. Liversidge issued a writ against Sir John Anderson and Mr. Herbert Morrison claiming a declaration that his detention in Brixton Prison was unlawful, and damages for false imprisonment. Paragraph 3 of the defence stated: "The defendants admit that the first-named defendant ordered that the plaintiff should be detained under the Defence (General) Regulations, 1939, Regulation 18B." Mr. Liversidge thereupon took out a summons before the Master asking, *inter alia*, for an order that the defendants should give particulars of paragraph 3 of the defence—namely (a) of the grounds on which the first defendant had reason to believe Mr. Liversidge to be a person of hostile associations, and (b) of the grounds on which he had reasonable cause to believe that, by reason of such associations, it was necessary to exercise control over him (Mr. Liversidge).

The Court of Appeal, dismissing Mr. Liversidge's appeal, held that the particulars sought should not be ordered because the onus did not lie on the defendants to prove (*i*) the various facts which Sir John Anderson considered justified him in making the order, or (*ii*) his reasonable and honest belief that it was necessary to make that order.

Mr. D. N. Pritt, K.C., and Mr. G. O. Slade appeared for Mr. Liversidge; the Attorney-General (Sir Donald Somervell, K.C.) and Mr. Valentine Holmes for the defendants.

TWO QUESTIONS

Mr. PRITT, opening the appeal, said that it raised a short but important matter, which resolved itself into two questions. If the Home Secretary had power to order the detention of a man under Regulation 18B of the Defence Regulations because he had reasonable cause to believe certain things about that man, must he not accept the burden of proving that such reasonable cause did exist? And must he not, if that burden were on him, give such particulars constituting that reasonable cause as would enable the detained person to know the case which he had to meet? Those questions involved construction of the relevant regulation and not any question of policy.

Counsel submitted that when a regulation gave the Home Secretary or anyone else power to detain citizens on his having reasonable cause to believe certain things, there was a power and a duty in the Court which had to try a false imprisonment action to decide on the existence or otherwise of reasonable cause. The Court must decide whether or not the condition laid down by the regulation had been fulfilled—namely, that the Home Secretary must have reasonable cause to believe. Once the Minister had such reasonable cause, he was free to accept it or not as he pleased and to take such action as he thought fit.

LORD ATKIN observed that an official, whether a police constable who made an arrest, or the Home Secretary who ordered a detention under Regulation 18B, stated that he had acted on reliable information that certain evidence existed. If the Court trusted the official, then the official had satisfied the Court that he had reasonable cause for his belief. He was not bound to disclose the identity of his informant or the actual source of the information. It was necessary to distinguish between the question where the onus lay and the question of the way in which the onus must be discharged.

Mr. PRITT submitted, in reply to a question from LORD WRIGHT, that the test of reasonableness in relation to the Home Secretary's belief under the regulation was really the same test as the familiar one of the hypothetical ordinary reasonable man.

Mr. PRITT then read the pleadings. Mr. Liversidge stated in his statement of claim, *inter alia*, that he was a British subject by birth, that he was arrested on May 29, 1940, and that he was and remained in detention in Brixton Prison.

"VERY STRICT INTERPRETATION"

Reading Regulation 18B (1A), Mr. Pritt submitted that the word "associations" in the phrase "hostile origin or associations" was so wide as to require a very strict interpretation.

COUNSEL submitted that there must in fact be reasonable cause the existence of which could be tested by the Court. The regulation

7

Law Report, Sept. 19

HOUSE OF LORDS

REGULATION 18B : ONUS OF PROOF
LIVERSIDGE v. ANDERSON AND ANOTHER

Before LORD MAUGHAM, LORD ATKIN, LORD MACMILLAN, LORD WRIGHT, *and* LORD ROMER.

The HOUSE continued the hearing of the appeal by Mr. Robert William Liversidge, of St. James's Close, Regent's Park, N.W., and of Brixton Prison, from a decision of the Court of Appeal (Lord Justice MacKinnon, Lord Justice Luxmoore, and Lord Justice du Parcq) dated June 20, 1941, upholding, on an interlocutory appeal, a decision in Chambers of Mr. Justice Tucker, who had affirmed a refusal of Master Moseley to order the defendants to an action brought by Mr. Liversidge to give certain particulars of the defence.

Mr. Liversidge issued a writ against Sir John Anderson and Mr. Herbert Morrison claiming a declaration that his detention in Brixton Prison was unlawful, and damages for false imprisonment. Paragraph 3 of the defence stated: "The defendants admit that the first-named defendant ordered that the plaintiff should be detained under the Defence (General) Regulations, 1939, Regulation 18B." Mr. Liversidge thereupon took out a summons before the Master asking, *inter alia*, for an order that the defendants should give particulars of paragraph 3 of the defence—namely (*a*) of the grounds on which the first defendant had reason to believe Mr. Liversidge to be a person of hostile associations, and (*b*) of the grounds on which he had reasonable cause to believe that, by reason of such associations, it was necessary to exercise control over him (Mr. Liversidge).

The Court of Appeal, dismissing Mr. Liversidge's appeal, held that the particulars sought should not be ordered because the onus did not lie on the defendants to prove (*i*) the various facts which Sir John Anderson considered justified him in making the order, or (*ii*) his reasonable and honest belief that it was necessary to make that order.

Mr. D. N. Pritt, K.C., and Mr. G. O. Slade appeared for Mr. Liversidge; the Attorney-General (Sir Donald Somervell, K.C.) and Mr. Valentine Holmes for the defendants.

Mr. PRITT continued his argument.

Replying to a question by LORD MAUGHAM whether he (counsel) did not really mean by "onus" an onus on the Secretary of State first to produce the detention order as justifying the detention (which would usually be admitted), and then to take the further step of proving the validity of the order, Mr. PRITT said that he feared the word "validity" in that context, but agreed that the question really was who had the burden of proving that the order was rightly made under Regulation 18B. The condition precedent, he (counsel) submitted, to the order's being rightly made was that the Home Secretary had reasonable cause to believe the matters set out in it.

LORD MAUGHAM suggested that Regulation 18B must surely have been framed in contemplation of the possibility that the Home Secretary had received some secret communication which caused him to make a detention.

Counsel submitted that, this being a civilized country living under Courts of law, the Legislature had in effect said that the point had not yet been reached where the Home Secretary could say: "I have this man in custody, and I have reasons which I will not disclose, and which may be right or wrong, which cause me to keep him in custody."

Replying to LORD MACMILLAN, Mr. PRITT agreed that the question at issue went far beyond a mere matter of form arising out of the question of onus. He agreed that he must logically submit that, if the Home Secretary in the witness-box refused to answer the question what was the reasonable cause on which he formed his belief, judgment should thereupon be for the plaintiff, because the defendant had failed to discharge the onus lying on him.

Mr. PRITT referred to authorities for his proposition that to detain a man against his wish was a trespass to his person, and that if anyone so detained him the burden was on the person detaining to show that what was apparently done improperly was in fact done properly. The Crown's argument, he said, would be that what seemed, *prima facie*, to be unlawful was really lawful.

Mr. SLADE addressed the House on the same side.

The ATTORNEY-GENERAL, opening his submission on behalf of the respondents, said that, as the statement of claim alleged nothing except the detention and its illegality, and the defence merely traversed the illegality and set up the order under which the detention was made, the case raised the question of onus in its simplest form. If their Lordships decided that, where an order, *prima facie* regular, was either proved or admitted, the onus was on the plaintiff to allege, particularize, and prove special facts which might establish its invalidity, then, as Mr. Pritt admitted, the appeal failed. If their Lordships decided that there was some onus on the defendants, different views were possible how that onus might be discharged. One view was that it might be sufficient for the Home Secretary to state that

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Law Report, Sept. 22

HOUSE OF LORDS

REGULATION 18B : ONUS OF PROOF
LIVERSIDGE v. ANDERSON AND ANOTHER

Before LORD MAUGHAM, LORD ATKIN, LORD MACMILLAN, LORD WRIGHT, *and* LORD ROMER.

The HOUSE continued the hearing of the appeal by Mr. Robert William Liversidge, of St. James's Close, Regent's Park, N.W., and of Brixton Prison, from a decision of the Court of Appeal (Lord Justice MacKinnon, Lord Justice Luxmoore, and Lord Justice du Parcq) dated June 20, 1941, upholding, on an interlocutory appeal, a decision in Chambers of Mr. Justice Tucker, who had affirmed a refusal of Master Moseley to order the defendants to an action brought by Mr. Liversidge to give certain particulars of the defence.

Mr. Liversidge issued a writ against Sir John Anderson and Mr. Herbert Morrison claiming a declaration that his detention in Brixton Prison was unlawful, and damages for false imprisonment. Paragraph 3 of the defence stated: "The defendants admit that the first-named defendant ordered that the plaintiff should be detained under the Defence (General) Regulations, 1939, Regulation 18B." Mr. Liversidge thereupon took out a summons before the Master, asking, *inter alia*, for an order that the defendants should give particulars of paragraph 3 of the defence—namely (*a*) of the grounds on which the first defendant had reason to believe Mr. Liversidge to be a person of hostile associations, and (*b*) of the grounds on which he had reasonable cause to believe that, by reason of such associations, it was necessary to exercise control over him (Mr. Liversidge).

The Court of Appeal, dismissing Mr. Liversidge's appeal, held that the particulars sought should not be ordered because the onus did not lie on the defendants to prove (*i*) the various facts which Sir John Anderson considered justified him in making the order, or (*ii*) his reasonable and honest belief that it was necessary to make that order.

Mr. D. N. Pritt, K.C., and Mr. G. O. Slade appeared for Mr. Liversidge; the Attorney-General (Sir Donald Somervell, K.C.) and Mr. Valentine Holmes for the defendants.

Continuing his argument, the ATTORNEY-GENERAL said that he would submit three propositions: (1) In construing Regulation 18B it must be emphasized that the detention followed on an order made by a duly constituted authority under statute. (2) If the argument advanced for the plaintiff were right, the effect would be to substitute the opinion of the Court for that of the Home Secretary. On the true construction of the regulation, however, the person who had to have reasonable cause was the Home Secretary, whose opinion or decision was final. But he (counsel) accepted that the Home Secretary could not act unless he had such cause for belief as to his own mind appeared reasonable. (3) The admission or proof of an order under Regulation 18B which appeared to be regular was a complete answer to a claim for damages for false imprisonment.

LORD MAUGHAM said that there seemed to be, apart from the question of construction of the regulation, the separate question what the Home Secretary had to prove, if anything.

The ATTORNEY-GENERAL said that in his submission the Home Secretary had to prove nothing.

LORD ATKIN observed that apparently the Home Secretary had to prove nothing, and the detained person could not prove anything. (Laughter.)

The ATTORNEY-GENERAL said that he could not accept what he called the half-way argument—namely, that there was an onus on the Home Secretary which might be satisfied by his placing certain, but not the whole, of the facts before the Court. He submitted that the Court had no jurisdiction to inquire into those matters, but that if such a jurisdiction existed it entitled the Court to inquire into all the facts.

In 99 out of 100 cases where a police constable arrested a man on suspicion criminal proceedings followed. If the arrested man was convicted no proceedings for false imprisonment were possible. But even if he were acquitted he would be very ill-advised to bring an action if the tribunal had not ruled that there was no case to answer. The Home Secretary, however, would spend all his time in defending actions if an action for false imprisonment lay for a detention under Regulation 18B. A person detained under the regulation could bring an action against the Home Secretary the next day, the result of which might be that proceedings before the advisory committee under the regulation would be simultaneous with proceedings before the Judge.

Counsel submitted that there was a great difference between particulars as ordered by a Court of law and the particulars which, under Regulation 18B, were to be supplied by the chairman of the advisory committee to the detained person to enable him to present his case.

Supposing, by way of example, that the

to take such action as he thought fit.

LORD ATKIN observed that an official, whether a police constable who made an arrest, or the Home Secretary who ordered a detention under Regulation 18B, stated that he had acted on reliable information that certain evidence existed. If the Court trusted the official, then the official had satisfied the Court that he had reasonable cause for his belief. He was not bound to disclose the identity of his informant or the actual source of the information. It was necessary to distinguish between the question where the onus lay and the question of the way in which the onus must be discharged.

Mr. PRITT submitted, in reply to a question from LORD WRIGHT, that the test of reasonableness in relation to the Home Secretary's belief under the regulation was really the same test as the familiar one of the hypothetical ordinary reasonable man.

Mr. PRITT then read the pleadings. Mr. Liversidge stated in his statement of claim, *inter alia*, that he was a British subject by birth, that he was arrested on May 29, 1940, and that he was and remained in detention in Brixton Prison.

"VERY STRICT INTERPRETATION"

Reading Regulation 18B (1A), Mr. Pritt submitted that the word "associations" in the phrase "hostile origin or associations" was so wide as to require a very strict interpretation.

COUNSEL submitted that there must in fact be reasonable cause the existence of which could be tested by the Court. The regulation provided that there must be reasonable cause for the Home Secretary's belief. It did not provide that there was to be reasonable cause of which the Home Secretary was alone to be the judge. The Home Secretary must satisfy the Court that he had reasonable cause to believe. The Court might decide that there was no material in existence on which it was reasonable for the Home Secretary to form his belief.

On its true construction, Regulation 18B empowered the Court to decide whether or not there was reasonable cause to believe. Another possible construction was that which took it away from the Court and left it entirely to the Home Secretary to decide. The one construction which seemed impossible was that of the defendants, which was that, while the Court had to consider the question of reasonableness, the burden of proof on that point lay on the plaintiff. There could be no legal basis for such an argument. There was nothing in the regulation to support it, and it ran counter to the whole history of English law. It would have been easy to insert an express provision to that effect in the regulation had it been intended.

LORD MACMILLAN said that he could conceive of a construction of the regulation which placed the onus on the person detaining. But how that onus was to be discharged was another matter. It might, for example, be a sufficient answer for the Home Secretary simply to say that he had reasonable cause. The question was whether the Minister's *ipse dixit* was enough; whether the regulation by "reasonable cause" meant cause which the Minister regarded as reasonable, or cause which the Court regarded as reasonable.

The hearing was adjourned.

Solicitors.—Messrs. Buckeridge and Braune; Treasury Solicitor.

disclose, and which may be right or wrong, which cause me to keep him in custody."

Replying to LORD MACMILLAN, Mr. PRITT agreed that the question at issue went far beyond a mere matter of form arising out of the question of onus. He agreed that he must logically submit that, if the Home Secretary in the witness-box refused to answer the question what was the reasonable cause on which he formed his belief, judgment should thereupon be for the plaintiff, because the defendant had failed to discharge the onus lying on him.

Mr. PRITT referred to authorities for his proposition that to detain a man against his wish was a trespass to his person, and that if anyone so detained him the burden was on the person detaining to show that what was apparently done improperly was in fact done properly. The Crown's argument, he said, would be that what seemed, *prima facie*, to be unlawful was really lawful.

Mr. SLADE addressed the House on the same side.

The ATTORNEY-GENERAL, opening his submission on behalf of the respondents, said that, as the statement of claim alleged nothing except the detention and its illegality, and the defence merely traversed the illegality and set up the order under which the detention was made, the case raised the question of onus in its simplest form. If their Lordships decided that, where an order, *prima facie* regular, was either proved or admitted, the onus was on the plaintiff to allege, particularize, and prove special facts which might establish its invalidity, then, as Mr. Pritt admitted, the appeal failed. If their Lordships decided that there was some onus on the defendants, different views were possible how that onus might be discharged. One view was that it might be sufficient for the Home Secretary to state that he had considered reports and documents and believed them.

The question at issue must be considered from different angles. He (counsel) would first consider it on the terms of regulation 18B, that was, apart from the general background of the subject-matter. He agreed that, having detained the appellant, the Home Secretary must show some legal warrant for his action.

LORD MACMILLAN said that the point emerged very crisply as one of pleading—namely, whether it was enough for the respondents to set up an order which, *prima facie*, complied with the regulation.

The ATTORNEY-GENERAL submitted that, if Mr. Pritt's contention were correct, the result would be that an order made by the Home Secretary under regulation 18B would, *prima facie*, be illegal.

The hearing was adjourned until Monday.

Solicitors.—Messrs. Buckeridge and Braune; Treasury Solicitor.

LORD ATKIN observed that apparently the Home Secretary had to prove nothing, and the detained person could not prove anything. (Laughter.)

The ATTORNEY-GENERAL said that he could not accept what he called the half-way argument—namely, that there was an onus on the Home Secretary which might be satisfied by his placing certain, but not the whole, of the facts before the Court. He submitted that the Court had no jurisdiction to inquire into those matters, but that if such a jurisdiction existed it entitled the Court to inquire into all the facts.

In 99 out of 100 cases where a police constable arrested a man on suspicion criminal proceedings followed. If the arrested man was convicted no proceedings for false imprisonment were possible. But even if he were acquitted he would be very ill-advised to bring an action if the tribunal had not ruled that there was no case to answer. The Home Secretary, however, would spend all his time in defending actions if an action for false imprisonment lay for a detention under Regulation 18B. A person detained under the regulation could bring an action against the Home Secretary the next day, the result of which might be that proceedings before the advisory committee under the regulation would be simultaneous with proceedings before the Judge.

Counsel submitted that there was a great difference between particulars as ordered by a Court of law and the particulars which, under Regulation 18B, were to be supplied by the chairman of the advisory committee to the detained person to enable him to present his case.

Supposing, by way of example, that the Court decided that the Home Secretary had had no reasonable cause for believing it necessary to detain a certain man who, having consequently been released, at once gave the enemy information resulting, say, in the sinking of one of our ships. In such a case the whole weight of public opinion would fall on the Court.

LORD ATKIN said that he thought that it would not do so more than where the Court acquitted a man of a criminal charge and he at once went and committed a crime.

Continuing, the ATTORNEY-GENERAL submitted that the question whether it was necessary to exercise control over a man, apart from other questions of fact arising under the regulation, must be one for the Executive to decide.

Referring to *Ex parte* Benicoff ([1920] 3 K.B. 72), he submitted that words might bear different meanings in different contexts, and that on the terms, the machinery and the subject-matter of Regulation 18B, the decision of the Home Secretary on the question of reasonable cause was final and could not be brought before the Court. The question whether the words "reasonable cause" bore the construction which he (counsel) claimed, or that for which Mr. Pritt contended, depended on the context. It must be possible for Parliament by the use of that phrase to signify that the matter was one for the personal attention of the Home Secretary.

Concluding his argument, the ATTORNEY-GENERAL submitted that, having regard to the purposes of the regulation, to the nature of the duty given by the regulation, and to the person charged with the duty, the reasonable belief of the Home Secretary was a matter for him alone and not one on which he should have to satisfy the Court.

Mr. HOLMES, following, submitted that the general importance of the case was that, if the whole of Mr. Pritt's contentions were accepted by the House, the Home Secretary would be placed in the grave dilemma of having to choose between releasing persons whom he believed to be a public danger, and giving information which he believed to be prejudicial to the safety of the State for him to give. Apart from the main question of the construction of Regulation 18B, there was the question whether the burden lay on the Home Secretary of proving not only that he had made the order, but that the condition precedent to the making of the order (reasonable cause to believe) had been satisfied.

On that point, he (counsel) had been startled by the proposition which flowed from Mr. Pritt's argument that every detention of A by B was *prima facie* illegal. He (counsel) had been unable, after exhaustive search against himself, to find any authority for that proposition.

On the main question (that of construction), he would conclude his argument by submitting six simple propositions: (1) The order was to be made by the Home Secretary, who was subject to Parliamentary control, and whose position under Regulation 18B was quite different from that of a police-constable who made an arrest. (2) The topics which fell to be considered by the Home Secretary under the regulation were proper for Executive investigation and not for investigation by the Court, the detention being preventive and not punitive. (3) The regulation itself provided the detained person with ample safeguards. (4) The regulation was really designed for a state of invasion. (5) Sub-section (8) of the regulation was fatal to Mr. Pritt's contentions. (6) If the Court were entitled to be given any of the Home Secretary's reasons for his belief it would be entitled to them all, but, on the true construction of the regulation, the Court was not intended to have any.

Mr. PRITT had not concluded his reply when the hearing was adjourned.

Solicitors. — Messrs. Buckeridge and Braune; Treasury Solicitor.

Law Report, Sept. 23

HOUSE OF LORDS

A HABEAS CORPUS APPLICATION

REX v. SECRETARY OF STATE FOR HOME AFFAIRS—EX PARTE GREENE

Before LORD MAUGHAM, LORD ATKIN, LORD MACMILLAN, LORD WRIGHT, *and* LORD ROMER.

The HOUSE began the hearing of the appeal by Mr. Benjamin Greene, of the Hall Cottage, Berkhamsted, from the decision of the Court of Appeal upholding the refusal by a Divisional Court of an application for a writ of *habeas corpus*. Mr. Greene is at present detained in Brixton Prison under regulation 18B of the Defence (General) Regulations, 1939.

On the application for the writ an affidavit was read in which Mr. Greene complained that he had been detained by the Executive without any charge having been preferred against him and without trial, and, therefore, in a manner which was, *prima facie*, illegal. On June 1, 1940, he was given a copy of an

Law Report, Sept. 24

HOUSE OF LORDS

A HABEAS CORPUS APPLICATION

GREENE v. SECRETARY OF STATE FOR HOME AFFAIRS

Before LORD MAUGHAM, LORD ATKIN, LORD MACMILLAN, LORD WRIGHT, *and* LORD ROMER.

The HOUSE continued the hearing of the appeal by Mr. Benjamin Greene, of the Hall Cottage, Berkhamsted, from the decision of the Court of Appeal upholding the refusal by a Divisional Court of an application for a writ of *habeas corpus*. Mr. Greene is at present detained in Brixton Prison under regulation 18B of the Defence (General) Regulations, 1939.

Mr. Greene appealed, his main ground of appeal being that the Home Secretary had no reasonable cause for believing that he was a person of hostile associations.

Mr. St. John Field, K.C., and Mr. J. W. Williamson appeared for Mr. Greene; the Attorney-General (Sir Donald Somervell, K.C.) and Mr. Valentine Holmes for the respondent.

Continuing his argument, Mr. FIELD said that the fundamental consideration was the language used. The words, "If the Home Secretary has reasonable cause to believe" necessarily imported a condition precedent to action on the Minister's part. If it were stated that certain facts existed, their existence must necessarily be established judicially. Parliament had quite deliberately used words which had a definite meaning in law. Honest belief was not sufficient. The belief must be founded on reasonable grounds. The legal meaning of the words "reasonable cause" had always been held to be that the belief on which action had been taken must be based on reasonable grounds peculiar to the matter under examination by the Court. The words had acquired a technical meaning, and it must be presumed that Parliament used them with that meaning.

Mr. FIELD, replying to LORD ATKIN, agreed that his argument was that the plain meaning of the words of Regulation 18B must be applied, that the words "reasonable cause" had always been used with a meaning which involved examination of the matter by some Court, and that those words were plain and unambiguous as used in the regulation.

LORD MAUGHAM said that if the construction were adopted: "If the Secretary of State in his honest opinion has reasonable cause to believe . . .," then the Minister's detention order under Regulation 18B would be a sufficient return to a writ of *habeas corpus*. If the standard were an external one, and the applicant showed absence of reasonable cause, then he was entitled to be discharged on the writ of *habeas corpus*.

OTHER REGULATIONS

Mr. FIELD then referred to other regulations in the Defence Regulations as supporting his argument on the construction of the words "reasonable cause" in Regulation 18B.

LORD MAUGHAM observed that it was true that in certain other of the regulations the words "reasonable cause" were used in a sense which looked as if it involved some external standard.

Continuing his argument, Mr. FIELD said that he thought that the most formidable proposition which he had to meet was that based on the inconvenience of laying before the Court the reasons for the Home Secretary's belief. To that he would reply that there was no reason why the Divisional Court should not, and every reason why it should, hear such cases *in camera*.

LORD ATKIN referred to the possible undesirability of disclosing to the applicant for the writ certain parts of the material information.

Mr. FIELD said that there had been cases where the applicant had suggested that the information should be placed before the Court in his absence.

Mr. FIELD then referred to certain authorities on the law of *habeas corpus*.

LORD MACMILLAN observed that the novelty and the importance of the present case seemed to lie in the fact that there was no case before the introduction of regulation 18B where the return to a writ of *habeas corpus* consisted of a statement by the person detaining that he had acted under statutory authority. He (his Lordship) expressed some doubt whether ordinary cases of *habeas corpus* which showed the principles on which the Court acted were of much assistance.

LORD MAUGHAM observed that at the present time all a man's rights and property might be taken away at a moment's notice by the Executive, and he had no right of appeal whatever unless the regulation under which the Executive had acted so provided.

Mr. FIELD submitted that it was just because the Executive might have such unlimited powers under a regulation that it was vitally important to his Majesty's subjects to know that the powers conferred by any given regulation were not exceeded.

Concluding his argument, Mr. FIELD said that his propositions could be summarized thus: (1) Even in war-time Regulation 18B must be construed in favour of the subject; (2) the Court must accept and enforce the words used by Parliament, however inconvenient the result; (3) words must not be read into the regulation which it did not contain; (4) the words "reasonable cause" in the regulation were plain and unambiguous; (5) the Legislature had used words with a well-known legal meaning, the effect of which was that belief by the Home Secretary was not enough, and that there must be reasonable grounds for it; (6) the return made to a writ of *habeas corpus* must enable the Court to judge of the grounds for the detention; (7) the Court must insist on seeing that the prescribed condition precedent to the exercise by the Executive of its power had been fulfilled; and (8) any inconvenience would be cured by the Court's hearing the case *in camera*.

The hearing was adjourned.

Solicitors.—Messrs. Oswald Hickson, Collier and Co.; Treasury Solicitor.

Law Report, Sept. 25

HOUSE OF LORDS

A HABEAS CORPUS APPLICATION

GREENE v. SECRETARY OF STATE FOR HOME AFFAIRS

Before LORD MAUGHAM, LORD ATKIN, LORD MACMILLAN, LORD WRIGHT, *and* LORD ROMER.

The HOUSE took time for consideration in the appeal by Mr. Benjamin Greene, of the Hall Cottage, Berkhamsted, from the decision of the Court of Appeal upholding the refusal by a Divisional Court of an application for a writ of *habeas corpus*. Mr. Greene is at present detained in Brixton Prison under Regulation 18B of the Defence (General) Regulations, 1939. Mr. Greene's main ground of appeal was that the Home Secretary had no reasonable cause for believing that he was a person of hostile associations.

Mr. St. John Field, K.C., and Mr. J. W. Williamson appeared for Mr. Greene; the Attorney-General (Sir Donald Somervell, K.C.) and Mr. Valentine Holmes for the respondent.

Mr. FIELD having concluded his submissions, Mr. WILLIAMSON, following, said that his argument could be summarized in the following propositions:—(1) Regulation 18B, on its true construction, made the existence of facts constituting "reasonable cause" a condition precedent to the Home Secretary's jurisdiction; (2) the Home Secretary had no "reasonable cause" for the requisite belief in Mr. Greene's case; (3) the Court had a duty to inquire into the facts and satisfy itself on that issue; (4) the onus of proof was on the Home Secretary; (5) he had not proved his case against Mr. Greene; (6) the provision in clause (8) of the regulation that "any person detained in pursuance of this regulation shall be deemed to be in lawful custody" meant "in lawful pursuance," and that, if it did not mean that, the regulation was *ultra vires*.

The ATTORNEY-GENERAL, opening his submissions for the respondent, said that the first question was that of construction. The issue between the Crown and Mr. Greene was whether the words of direction given to the Home Secretary by the Legislature referred to the way in which he, as the executive authority, was to apply his mind in dealing with the problem in question, or whether they laid down a standard which could be applied by the Court.

Assuming that he (counsel) was wrong on construction, the question of onus in *habeas corpus* proceedings arose. But even on that assumption production of proof of the detention order made under Regulation 18B was a good return to a writ unless and until the applicant could by evidence establish its *prima facie* invalidity.

He (counsel) further submitted that the finding of fact by all the Judges in the Courts below should be supported—namely, that Mr. Greene had not been substantially prejudiced by the irregularities in the documents of which he complained. Such irregularities did not render the detention illegal, although it was not contended that the greatest scrupulousness should not be observed in carrying out the regulation.

Mr. FIELD, having made his submissions in reply, the HOUSE, as stated, took time for consideration.

Solicitors. — Messrs. Oswald Hickson, Collier and Co.; Treasury Solicitor.

Law Report, Nov. 3

HOUSE OF LORDS

Before LORD MAUGHAM, LORD ATKIN, LORD MACMILLAN, LORD WRIGHT, *and* LORD ROMER.

REGULATION 18B: ONUS OF PROOF
LIVERSIDGE v. ANDERSON AND ANOTHER

The House by a majority, Lord Atkin dissenting, dismissed the appeal by Mr. Robert William Liversidge, of St. James's Close, Regent's Park, N.W., and of Brixton Prison, from a decision of the Court of Appeal (Lord Justice MacKinnon, Lord Justice Luxmoore, and Lord Justice du Parcq) dated June 20, 1941, upholding, on an interlocutory appeal, a decision in Chambers of Mr. Justice Tucker, who had affirmed a refusal of Master Moseley to order the defendants to an action brought by Mr. Liversidge to give certain particulars of the defence.

Mr. Liversidge issued a writ against Sir John Anderson and Mr. Herbert Morrison claiming a declaration that his detention in Brixton Prison was unlawful, and damages for false imprisonment. Paragraph 3 of the defence stated: "The defendants admit that the first-named defendant ordered that the plaintiff should be detained under the Defence (General) Regulations, 1939, regulation 18B." Mr. Liversidge thereupon took out a summons before the Master, asking, *inter alia*, for an order that the defendants should give particulars of paragraph 3 of the defence—namely (*a*) of the grounds on which the first defendant had reason to believe Mr. Liversidge to be a person of hostile associations, and (*b*) of the grounds on which he had reasonable cause to believe that, by reason of such associations, it was necessary to exercise control over him (Mr. Liversidge).

The Court of Appeal, dismissing Mr. Liversidge's appeal, held that the particulars sought should not be ordered because the onus did not lie on the defendants to prove (*i*) the various facts which Sir John Anderson considered justified him in making the order, or (*ii*) his reasonable and honest belief that it was necessary to make that order.

Mr. Liversidge appealed.

Mr. D. N. Pritt, K.C., and Mr. G. O. Slade appeared for Mr. Liversidge: the Attorney-General (Sir Donald Somervell, K.C.) and Mr. Valentine Holmes for the defendants.

JUDGMENT

LORD MAUGHAM, whose judgment was read by Lord Macmillan, stated:—The real object of the application was to raise at that early stage the vital question what onus, if any, lay on the defendants in the action in the circumstances of the case. If the order for the detention of Mr. Liversidge was valid the action must clearly fail. He accordingly sought to throw on the defendants the burden of justifying the order.

Section 1 (1) of the Emergency Powers (Defence) Act, 1939, provided that his Majesty by Order in Council

> may make such regulations . . . as appear to him to be necessary or expedient for securing the public safety, the defence of the Realm, the maintenance of public order and the efficient prosecution of any war in which his Majesty may be engaged, and for maintaining supplies and services essential to the life of the community.

Subsection (2) enacted that Defence Regulations might make provision for a number of important purposes including regulations

> for the detention of persons whose detention appears to the Secretary of State to be expedient in the interests of the public safety or the defence of the Realm.

The Court of Appeal in the present case were precluded by a previous decision from considering the main point argued before the House—namely, whether there were in fact reasonable grounds for the beliefs (*a*) that Mr. Liversidge was a person of hostile associations, and (*b*) that by reason thereof it was necessary to exercise control over him. Here, however, the Secretary of State who made the order, and his successor in office, had sworn no affidavit in the action, and Mr. Liversidge was therefore entitled to contend, and did contend, that the mere production of an order signed by the Secretary of State was not a sufficient *prima facie* defence to the action of false imprisonment, and that an onus lay on the respondents to give evidence at the trial to prove that Sir John Anderson had reasonable grounds for the belief recited in the order.

He (Lord Maugham) would first deal with the important question of the construction of the words in the regulation: "If the Secretary of State has reasonable cause to believe," &c., that was, the question whether, as Mr. Liversidge contended, the words required that there must be an external fact as to reasonable cause for the belief, and one therefore capable of being challenged in a Court of law; or whether, as the defendants contended, the words in the context in which they were found pointed simply to the belief of the Secretary of State founded on his view of there being reasonable cause for the belief which he entertained. Secondly, he would express his opinion on the question (which strictly speaking would not arise till the trial) whether the order of the Secretary of State was in the circumstances sufficient *prima-facie* proof that the Secretary of State had acted lawfully and that the detention of Mr. Liversidge was accordingly not illegal.

LIBERTY OF THE SUBJECT

Counsel for Mr. Liversidge truly said that the liberty of the subject was involved. They referred in emphatic terms to Magna Carta and the Bill of Rights and contended that legislation dealing with the liberty of the subject must be construed, if possible, in favour of the subject and against the Crown. He (his Lordship) held that the suggested rule had no relevance in dealing with an executive measure by way of preventing a public danger when the safety of the State was involved. The language of the Act of 1939 showed beyond a doubt that Defence Regulations might be made which must deprive the subject "whose detention appears to the Secretary of State to be expedient in the interests of the public safety" of all his liberty of movement while the regulations remained in force.

The Legislature obviously proceeded on the footing that there might be certain persons against whom no offence was proved nor any charge formulated, but as regarded whom it might be expedient to authorize the Secretary of State to make an order for detention. The only safeguards, if they were safeguards, was that detention "appears to the Secretary of State to be expedient in the interests of the public safety or the defence of the Realm," and that he himself was subject to the control of Parliament. It should be added that the power concerned was to take preventive measures in the nature of internment which would only last for a limited time. There was no charge against Mr. Liversidge.

In the absence of a context the *prima facie* of State in that and like matters for the defence of the Realm. The power of the Court (under section 6 of the Act) to give directions for the hearing of proceedings *in camera* would not prevent confidential matters from leaking out, since such matters would become known to the person detained and to a number of other persons.

The person primarily entrusted with these most important duties was one of the principal Secretaries of State, and a member of Government answerable to Parliament for a proper discharge of his duties. He was not at all in the same position as, for example, a police constable.

If any appeal from the decision of the Secretary of State had been thought proper, it would have been to a special tribunal with power to inquire privately into all the reasons for the Secretary's action, but without any obligation to communicate them to the person detained.

The result was that there was no preliminary question of fact which could be submitted to the Courts, and that in effect there was no appeal from the decision of the Secretary of State in those matters, provided only that he acted in good faith. It followed that the application for particulars must fail.

As for the question whether an onus was thrown on the Minister who made the order for detention to give evidence to show that he had reasonable cause to believe Mr. Liversidge to be a person of hostile associations, and that by reason thereof it was necessary to exercise control over him, the well-known presumption *omnia esse rite acta* applied to the order, and accordingly, assuming the order to be proved or admitted, it must be taken *prima facie* to have been properly made, and that the requisite as to the belief of the Secretary of State was complied with.

The appeal should be dismissed.

LORD ATKIN'S VIEW

LORD ATKIN, in the course of his dissenting speech, said that the material words were simple and, in his opinion, obviously gave only a conditional authority to the Minister to detain any person without trial, the condition being that he had reasonable cause for the belief which led to the detention order. The meaning, however, which appeared to have found favour with some of their Lordships was that there was no condition; for the words "if the Secretary of State has reasonable cause" merely meant if the Secretary of State thought that he had reasonable cause. The result was that the only implied condition was that the Secretary of State acted in good faith. If he did that the Minister had been given complete discretion whether he should detain a subject or not. It was an absolute power which had never been given before to the Executive, and he (his Lordship) would demonstrate that no such power was in fact given to the Minister by the words in question.

It was surely incapable of dispute that the words "If A has X" constituted a condition the essence of which was the existence of X and the having of it by A. The words did not and could not mean "If A thinks that he has." "Reasonable cause" for an action or a belief was just as much a positive fact capable of determination by a third party as was a broken ankle or a legal right. That meaning of the words had been accepted in innumerable legal decisions for many generations: "reasonable cause" for a belief when the subject of legal dispute had been always treated as an objective fact to be proved by one or other party and to be determined by the appropriate tribunal.

In the Defence Regulations themselves the persons responsible for the framing of them had shown themselves to be fully aware of the true meaning of the words, and had obviously used the words "reasonable cause" to indicate that mere honest belief was not enough, using different words where it was intended that the Executive officer should have unqualified discretion.

Having considered the various Defence Regulations as supporting that view, his LORDSHIP considered the wording of regulation 18B, and said that organizations were impugned if the Secretary of State was satisfied as to their nature, but the person was not to be detained unless the Secretary of State had reasonable cause to believe that he was a member. Why the two different expressions should be used if they had the same "subjective" meaning no one had been able to explain. He suggested that the obvious intention was to give a safeguard to the individual against arbitrary imprisonment.

CONFIDENTIAL MATTERS

It was argued that it could never have been intended to substitute the decision of Judges for that of the Minister. But no one proposed either a substitution or an appeal. A Judge had the duty to say whether the conditions of the power of detention were fulfilled. If there were reasonable grounds, the Judge had no further duty of deciding whether he would have formed the same belief, any more than, if there was reasonable evidence to go to a jury, the Judge was concerned with whether he would have come to the same verdict. It was further argued that the grounds of belief might be confidential matters of public importance, and that it was impossible to suppose that the Secretary of State was intended to disclose either his grounds or his information to the Court. The objection was answered by the very terms of the regulation itself, in its provisions that the detained person had the right to make objections to an advisory committee, and that the chairman must inform the objector of the grounds on which the order had been made against him.

The only argument as to expediency put forward by the defendants which had any weight was that it could not have been intended that the accumulated experience, instinct, knowledge of the Minister in coming to a decision on this matter could be replaced by a judgment of a Court of law. But before that decision was made there had to be a valid belief that the subject was of hostile origin, association, &c. Once that was established it was very unlikely that a Court would not in most cases accept as reasonable the Home Secretary's decision to detain.

He (Lord Atkin) viewed with apprehension the attitude of Judges who on a mere question of construction, when face to face with claims involving the liberty of the subject, showed themselves more executive-minded than the Executive. Their function was to give words their natural meaning, although not perhaps in war-time leaning towards liberty. In this country amid the clash of arms the laws were not silent. They might be changed, but they spoke the same language in war as in peace. It had always been one of the pillars of freedom, one of the principles of liberty for which on recent authority this country was now fighting, that the Judges were no respecters of persons, and stood between the subject and any attempted encroachments on his liberty by the Executive, alert to see that any coercive action was justified in law. In this case he (his Lordship) had listened to arguments which

control over him (Mr. Liversidge).

The Court of Appeal, dismissing Mr. Liversidge's appeal, held that the particulars sought should not be ordered because the onus did not lie on the defendants to prove (*i*) the various facts which Sir John Anderson considered justified him in making the order, or (*ii*) his reasonable and honest belief that it was necessary to make that order.

Mr. Liversidge appealed.

Mr. D. N. Pritt, K.C., and Mr. G. O. Slade appeared for Mr. Liversidge; the Attorney-General (Sir Donald Somervell, K.C.) and Mr. Valentine Holmes for the defendants.

JUDGMENT

Lord Maugham, whose judgment was read by Lord Macmillan, stated:—The real object of the application was to raise at that early stage the vital question what onus, if any, lay on the defendants in the action in the circumstances of the case. If the order for the detention of Mr. Liversidge was valid the action must clearly fail. He accordingly sought to throw on the defendants the burden of justifying the order.

Section 1 (1) of the Emergency Powers (Defence) Act, 1939, provided that his Majesty by Order in Council

> may make such regulations . . . as appear to him to be necessary or expedient for securing the public safety, the defence of the Realm, the maintenance of public order and the efficient prosecution of any war in which his Majesty may be engaged, and for maintaining supplies and services essential to the life of the community.

Subsection (2) enacted that Defence Regulations might make provision for a number of important purposes including regulations

> for the detention of persons whose detention appears to the Secretary of State to be expedient in the interests of the public safety or the defence of the Realm.

The Court of Appeal in the present case were precluded by a previous decision from considering the main point argued before the House—namely, whether there were in fact reasonable grounds for the beliefs (*a*) that Mr. Liversidge was a person of hostile associations, and (*b*) that by reason thereof it was necessary to exercise control over him. Here, however, the Secretary of State who made the order, and his successor in office, had sworn no affidavit in the action, and Mr. Liversidge was therefore entitled to contend, and did contend, that the mere production of an order signed by the Secretary of State was not a sufficient *prima facie* defence to the action of false imprisonment, and that an onus lay on the respondents to give evidence at the trial to prove that Sir John Anderson had reasonable grounds for the belief recited in the order.

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The Legislature obviously proceeded on the footing that there might be certain persons against whom no offence was proved nor any charge formulated, but as regarded whom it might be expedient to authorize the Secretary of State to make an order for detention. The only safeguards, if they were safeguards, was that detention "appears to the Secretary of State to be expedient in the interests of the public safety or the defence of the Realm," and that he himself was subject to the control of Parliament. It should be added that the power concerned was to take preventive measures in the nature of internment which would only last for a limited time. There was no charge against Mr. Liversidge.

In the absence of a context the *prima facie* meaning of such a phrase as "if A.B. has reasonable cause to believe" a certain thing, it should be construed as meaning "if there is in fact reasonable cause for believing" that thing and if A.B. believes it. But he (his Lordship) was quite unable to take the view that the words could only have that meaning. It seemed reasonably clear that if the thing to be believed was something which was essentially one within the knowledge of A.B., or one for the exercise of his exclusive discretion, the words might well mean if A.B. acting on what he thought was reasonable cause (and of course acting in good faith) believed the thing in question.

Having referred to the various matters which under regulation 18B the Secretary of State must have reasonable cause to believe, his Lordship said that any one of those various circumstances was sufficient to satisfy the first fact which the Secretary of State must believe, and that he did not doubt that a Court could investigate the question whether there were grounds for a reasonable man to believe some at least of those facts if they could be put before the Court. But the Minister must at the same time also believe something very different in its nature—namely, that by reason of the first fact, "it is necessary to exercise control over" the person in question. To his (his Lordship's) mind that was so clearly a matter for Executive discretion and nothing else that those responsible for the Order-in-Council could not have contemplated for a moment the possibility that the action of the Secretary of State might be subject to the discussion, criticism, and control of a Judge in a Court of law. If, then, in the present case the second requisite, as to the grounds on which the Secretary of State could make his order for detention, was left to his sole discretion without appeal to a Court, it necessarily followed that the same was true of all the facts which he must have reasonable cause to believe.

What was of even greater importance was that obviously the Minister would in many cases be acting on information of the most confidential character, which could not be communicated to the person detained or disclosed in Court without the greatest risk of prejudicing the future efforts of the Secretary

In the course of his dissenting speech, said that the material words were simple and, in his opinion, obviously gave only a conditional authority to the Minister to detain any person without trial, the condition being that he had reasonable cause for the belief which led to the detention order. The meaning, however, which appeared to have found favour with some of their Lordships was that there was no condition; for the words "if the Secretary of State has reasonable cause" merely meant if the Secretary of State thought that he had reasonable cause. The result was that the only implied condition was that the Secretary of State acted in good faith. If he did that the Minister had been given complete discretion whether he should detain a subject or not. It was an absolute power which had never been given before to the Executive, and he (his Lordship) would demonstrate that no such power was in fact given to the Minister by the words in question.

It was surely incapable of dispute that the words "If A has X" constituted a condition the essence of which was the existence of X and the having of it by A. The words did not and could not mean "If A thinks that he has." "Reasonable cause" for an action or a belief was just as much a positive fact capable of determination by a third party as was a broken ankle or a legal right. That meaning of the words had been accepted in innumerable legal decisions for many generations; "reasonable cause" for a belief when the subject of legal dispute had been always treated as an objective fact to be proved by one or other party and to be determined by the appropriate tribunal.

In the Defence Regulations themselves the persons responsible for the framing of them had shown themselves to be fully aware of the true meaning of the words, and had obviously used the words "reasonable cause" to indicate that mere honest belief was not enough, using different words where it was intended that the Executive officer should have unqualified discretion.

Having considered the various Defence Regulations as supporting that view, his Lordship considered the wording of regulation 18B, and said that organizations were impugned if the Secretary of State was satisfied as to their nature, but the person was not to be detained unless the Secretary of State had reasonable cause to believe that he was a member. Why the two different expressions should be used if they had the same "subjective" meaning no one had been able to explain. He suggested that the obvious intention was to give a safeguard to the individual against arbitrary imprisonment.

CONFIDENTIAL MATTERS

It was argued that it could never have been intended to substitute the decision of Judges for that of the Minister. But no one proposed either a substitution or an appeal. A Judge had the duty to say whether the conditions of the power of detention were fulfilled. If there were reasonable grounds, the Judge had no further duty of deciding whether he would have formed the same belief, any more than, if there was reasonable evidence to go to a jury, the Judge was concerned with whether he would have come to the same verdict. It was further argued that the grounds of belief might be confidential matters of public importance, and that it was impossible to suppose that the Secretary of State was intended to disclose either his grounds or his information to the Court. The objection was answered by the very terms of the regulation itself, in its provisions that the detained person had the right to make objections to an advisory committee, and that the chairman must inform the objector of the grounds on which the order had been made against him.

The only argument as to expediency put forward by the defendants which had any weight was that it could not have been intended that the accumulated experience, instinct, knowledge of the Minister in coming to a decision on this matter could be replaced by a judgment of a Court of law. But before that decision was made there had to be a valid belief that the subject was of hostile origin, association, &c. Once that was established it was very unlikely that a Court would not in most cases accept as reasonable the Home Secretary's decision to detain.

He (Lord Atkin) viewed with apprehension the attitude of Judges who on a mere question of construction, when face to face with claims involving the liberty of the subject, showed themselves more executive-minded than the Executive. Their function was to give words their natural meaning, although not perhaps in war-time leaning towards liberty. In this country amid the clash of arms the laws were not silent. They might be changed, but they spoke the same language in war as in peace. It had always been one of the pillars of freedom, one of the principles of liberty for which on recent authority this country was now fighting, that the Judges were no respecters of persons, and stood between the subject and any attempted encroachments on his liberty by the Executive, alert to see that any coercive action was justified in law. In this case he (his Lordship) had listened to arguments which might have been addressed acceptably to the Court of King's Bench in the time of Charles I.

He protested, even if he did it alone, against a strained construction put on words with the effect of giving an uncontrolled power of imprisonment to the Minister. The words had only one meaning: they were used with that meaning in statements of the common law and in statutes. They had never been used in the sense now imputed to them; they were used in the Defence Regulations in the natural meaning.

He knew of only one authority which might justify the suggested method of construction. "When I use a word," Humpty Dumpty had said in rather a scornful tone, "it means just what I choose it to mean, neither more nor less." "The question is," said Alice, "whether you can make words mean different things." "The question is," said Humpty Dumpty, "which is to be master—that's all." (Looking Glass, c. vi.) After all the long discussion in that House the question was whether the words "If a man has" could mean "If a man thinks he has." He was of opinion that they could not, and that the case should be decided accordingly.

The plaintiff's right to particulars, however, was based on a principle which, again, was one of the pillars of liberty, in that in English law every imprisonment was *prima facie* unlawful, and that it was for a person directing imprisonment to justify his act.

Lord Macmillan, Lord Wright, and Lord Romer gave judgments agreeing that the appeal should be dismissed.

Solicitors. — Messrs. Buckeridge and Braune; Treasury Solicitor.

A HABEAS CORPUS APPLICATION

The House unanimously dismissed the appeal by Mr. Benjamin Greene, of the Hall Cottage, Berkhamsted, from the decision of the Court of Appeal upholding the refusal by a Divisional Court of an application for a writ of *habeas corpus*. Mr. Greene is at present detained in Brixton Prison under regulation 18B of the Defence (General) Regulations, 1939.

War and Habeas Corpus

The House of Lords gave judgment yesterday in two cases, both of which involved that cardinal principle of the Constitution, the liberty of the subject. The substance of Defence Regulation 18B is by this time widely familiar; it empowers the HOME SECRETARY to imprison, untried, without intention of trial, and indefinitely, persons of whose loyalty he has doubts. In order to exercise this power he has only to be "reasonably satisfied" that the person to be arrested belongs to one of several defined classes of suspected (not necessarily guilty) characters. The point raised by different procedures in both yesterday's cases was whether the HOME SECRETARY can be made accountable to a court of law for his exercise of this power. It was common ground that no court could inquire into the guilt or innocence of the person in custody, for no legal offence need be imputed to him; but it was argued that the adverb in the phrase "reasonably "satisfied" gave the courts jurisdiction to inquire into the reasonableness of the HOME SECRETARY'S satisfaction.

The House of Lords, by a majority of four to one, affirming the unanimous judgments of three Judges in the Divisional Court and three more in the Court of Appeal, has decided against this contention. The HOME SECRETARY has not to justify himself by proving that the suspicions on which he has acted are those which would be entertained by the "reasonable man" of legal hypothesis; it is enough if his opinion that the captive belongs to one of the suspect categories has been reached by a process of reasoning from the information he possesses; and evidently he alone can say whether that is so. LORD ATKIN'S dissenting opinion is a masterly plea for interpreting the language of the Statute harmoniously with the great tradition of the common law. But the majority have put it beyond argument that the law is what the draftsmen of the enabling Statute certainly intended it to be: the HOME SECRETARY'S decision is not subject to judicial review.

Whether this ought to be the law is of course a distinct question, with which the House of Lords was not concerned. The first rule of the common law in time of peace is that no subject shall be imprisoned who has not been proved guilty of an offence. In time of war however we are forced to substitute the rule that no one shall be at large whose liberty may be a threat to a wider liberty, a danger to the commonwealth; and the Executive must be granted all powers required to secure that end. It is essential in peace and desirable in war that the exercise of any power granted to the Executive to limit the liberty of the subject shall be subject to judicial review; but the application of this principle must clearly stop short of defeating the object for which the powers have been conferred by the legislature. Under the war emergency legislation, that object is the safety of the realm. Could it be preserved if persons imprisoned under Regulation 18B were allowed to appeal from the HOME SECRETARY to the courts? It goes without saying that the majority of such appeals would have to be heard *in camera*, since military secrets would be involved. In many cases it would even be necessary to exclude the appellant, lest a presumed enemy of the commonwealth should learn the secrets of the intelligence service. A trial held in such circumstances would not strike most Englishmen as very judicial. Add to this that the substance of the issue would nearly always be no question of law, but the balancing of the degree of suspicion aroused by the appellant against the possible wrong of imprisoning an innocent man. This is an issue of policy; and any Judge who ordered the release of a prisoner in disregard of the HOME SECRETARY'S opinion that he was dangerous would in fact be assuming a responsibility in the sphere of national defence which can be borne only by the Executive officer answerable to Parliament.

The fact that a judicial review of these administrative acts, through the machinery of Habeas Corpus or otherwise, is impracticable makes it all the more urgent to see that everything possible is done to mitigate any injustices that may proceed from the suspension of the historic safeguards of liberty. Under the Defence Regulations there are two precautions against miscarriage of justice. The first is embodied in the HOME SECRETARY'S advisory committee, to which an imprisoned person may have the consideration of his case remitted. He may appear before it in person to answer the allegations against him, the heads of which will be communicated to him, although he cannot of course claim to know, as he would in a court of law, the sources and nature of the HOME SECRETARY'S information. The committee will then advise the Minister, but naturally cannot relieve him of the burden of decision. He must, however, render to Parliament a report of the number of times he rejects their advice. The second protection is in the conscience of the HOME SECRETARY himself, for the present holder of the office has acknowledged his duty to give his personal attention to each individual case.

Those who are concerned—as who is not?—for the future of English liberty will best serve it if they can ensure that this system, amended if need be in detail, is efficiently and conscientiously administered. Would it, for instance, be improved if the interned were allowed to appear by counsel before the advisory committee? Is it true, as has been suggested, that subordinates or other Departments try to induce the HOME SECRETARY to imprison suspects on their certificate, without himself investigating the case? Questions of this kind are perfectly legitimate, and it is all to the good if Ministers are plied, even pestered, with them in Parliament. Neither Ministers nor Parliament must ever forget, or be allowed to forget, that the whole apparatus of the emergency powers is an anomaly, though an anomaly with a purpose, and must not be allowed to strike any roots in our peace-time law. By all the standards of centuries past subjection to an unchecked Executive is normally intolerable. The nation is determined not to tolerate it, but to spare no effort to break free from the shackles and overthrow the tyrant who imposed them. His name, however, is not HERBERT MORRISON but ADOLF HITLER.

LORD ATKIN'S DEFENCE LAW PROTEST

ENCROACHMENT BY MINISTERS

The House of Lords, by a majority of four to one, yesterday dismissed the appeal of Mr. Robert William Liyersidge, of St. James's-close, Regent's Park, N.W., detained under Defence Regulation 18B. No order was made as to costs.

Mr. Liversidge had appealed against the refusal of his application for particulars of the grounds on which the Home Secretary, Mr. Herbert Morrison, believed him to be a person of hostile associations. Arguments in the case were heard in September.

Viscount Maugham, giving judgment dismissing the appeal, said he thought that if there was a reasonable doubt as to the meaning of the words used in the Regulation they should prefer a construction which would carry into effect the plain intention of those responsible for the Order in Council rather than one which would defeat that intention.

To his mind this was so clearly a matter for Executive discretion and nothing else that he could not believe that those responsible for the Order in Council could have contemplated the possibility of the action of the Secretary of State being subject to the discussion, criticism, and control of a judge in a court of law.

If the ground on which the Secretary of State could make his order for detention were left to his sole discretion, without appeal to a court, it necessarily followed that the same was true as to all the facts which he must have reasonable cause to believe when making an order for detention.

"EXECUTIVE-MINDED JUDGES"

Lord Atkin expressed the opinion that the appeal should be allowed.

"I view with apprehension," he said, "the attitude of judges who, on the mere question of construction, when face to face with claims involving the liberty of the subject, show themselves more executive-minded than the Executive.

"In this country the laws may be changed, but they speak the same language in war as in peace.

"It has always been one of the pillars of freedom, one of the principles of liberty for which, on recent authority, we are now fighting, that judges are no respecters of persons and stand between the subject and any attempted encroachment on his liberty by the Executive.

"In this case I have listened to arguments which might have been addressed acceptably to the court of the King's Bench in the time of Charles I. I protest, even if I do it alone, against a strained construction put upon words with the effect of giving an uncontrolled power of imprisonment to the Minister.

"The words have only one meaning. They are used with that meaning in statements of common law and in statutes, and have never been used in the sense now imputed to them.

They are used in the Defence Regulations in the natural meaning, and when it is intended to express the meaning now imputed to them, different and apt words are used in the Defence Regulations generally and in this regulation in particular.

WHAT HUMPTY-DUMPTY SAID

"I know of only one authority which might justify the suggested method of construction.

"'When I use a word,' Humpty-Dumpty said in a rather scornful tone, 'it means just what I choose it to mean, neither more nor less.' 'The question is,' said Alice, 'whether you can make words mean different things.' 'The question is,' said Humpty-Dumpty, 'which is to be master—that's all.'"

Lord Atkin added that he was profoundly convinced that the Home Secretary had not been given unconditional authority to detain.

Lord Macmillan said that in a time of emergency it might well be that a regulation for the defence of the realm might properly have a meaning which, because of its drastic invasion of the liberty of the subject, the courts would be slow to attribute to a peace-time measure.

PUBLIC SAFETY QUESTION

The purpose of the regulation was to ensure public safety, and it was right so to interpret emergency legislation as to promote rather than defeat its efficiency for the defence of the realm.

He concurred that the appeal should be dismissed, as did Lord Wright and Lord Romer.

18b

FIVE judges of the House of Lords, Lord ATKIN alone dissenting, yesterday held that in a case of internment under Defence Regulation 18b there is no appeal from the Home Secretary's decision, and that he cannot be compelled by the Courts to state the reasons for his action. This is a strong decision; but on grounds of war-time common sense it will be welcomed by the public. Lord ATKIN held that the interpretation of the regulation had been strained in favour of the Executive, and appealed to those principles of liberty for which we are fighting. It is an argument which might be, and has been, urged by less responsible persons than Lord ATKIN against any sort of war-time restriction on individual liberty; and the simple answer to it is that, when the whole of our liberties are threatened, we are willing temporarily to sacrifice a part of them in defending them. That may lead to isolated cases of hardship; it is a risk that has to be taken. We are able, fortunately, to rely on the spirit in which our war-time laws are exercised for the reducing of that risk to a minimum. If the discretion given to a Minister is wilfully abused, there are means of bringing him to book; the power of Parliament is unrestrained. Neither in this nor any other case, however, has such abuse been alleged. We are at war, and the conditions which the national security requires have to be accepted.

HOUSE OF COMMONS

THURSDAY, MARCH 14

The SPEAKER took the Chair at a quarter past 2 o'clock.

"RIDICULOUS" GATHERING AT ALBERT HALL

HOME OFFICE REPORT

Mr. EDE made the following statement on the meeting arranged at the Albert Hall last night by the Vigilantes Action League:—

The meeting was attended by an observer, not a member of the police force, who has submitted to me the following report:—

This meeting, even had it not been interrupted by the Communists, would have been a complete exposure of the futility of the Vigilantes Action League. (Cheers.) None of the speakers whom it had been announced Mr. Preen had hoped to get were present, and the only person on the platform, apart from Mr. Preen himself, who is a very poor speaker—(loud laughter)—was Mrs. Lumley, an official of the organization. About 150 to 200 people appeared to have attended for the purpose of hearing the Vigilantes' speakers. In the large spaces of the Albert Hall they looked even less—(laughter)—and the result was to make ridiculous both the organizers of the meeting and the Communists—(laughter and cheers)—who attempted to make out of it a Fascist bogy.

About 200 Communists were in the hall. They had come with the intention of occupying the 2,000 free seats—(loud laughter)—advertised by the organizers, but these were at the last moment withheld, and they eventually paid to come in. (Loud and prolonged laughter.) They were, almost without exception, very young. They were clearly out for an evening's entertainment, and the proceedings had the air of a student rag rather than a serious political demonstration.

As soon as Mr. Preen began to speak the Communists started to shout: "Fascist" and "What about the 2,000 free seats?" (Laughter.) They kept up a running commentary on Mr. Preen's remarks and on those of Mrs. Lumley, who appeared to be trying to say that she only wanted to talk about housing, that she had been homeless herself, that she was an ordinary hard-working woman, and was not intending to make a political speech. (Laughter.) It was clear that the Communists expected Mr. Jeffrey Hamm to speak, and there was a good deal of difference of opinion among them as to whether they should not stop barracking the preliminary speakers and wait for the more important ones.

ORGANIZED BODY

It was clear that they were an organized body. One or two of their leaders were shouting: "Comrades, orders are that we are to keep quiet"—(loud laughter)—and there were references to the London District Committee and to discipline.

The rank and file would not, however, be kept quiet—(laughter)—and when Mrs. Lumley had been attempting to speak for about 10 minutes they surged round the hall on to the platform and occupied the seats behind the speakers' table. Mr. Preen and Mrs. Lumley disappeared—(laughter)—and the Communists were addressed by one or two of their leaders. Mr. Cruikshank——

There was loud laughter when he said this name, and members looked for Captain Crookshank on the front Opposition bench, but in vain. Mr. EDE, amid more laughter, said:—"His name is spelt Cruikshank." Continuing his statement, he said:—

Mr. Cruikshank, a member of the London District Committee of the Communist Party, moved a resolution demanding the banning of Fascism and the group sang the "Internationale." Meanwhile, the original audience had retired to another part of the hall, where it appeared to be carrying on a discussion of its own. (Laughter.)

At this point the police intervened. Their entry was greeted by the singing of "While Irish eyes are smiling." (Loud laughter.) An attempt was made to resume the original meeting, but as soon as Mr. Preen and Mrs. Lumley returned to the platform the Communists started shouting again and returned to the platform. Eventually Mr. Cruikshank announced that the police had undertaken that if the Communists dispersed the original meeting would not be held. Somebody shouted "Three cheers for the police." (Laughter.) These were given, and the proceedings came to a more or less amicable conclusion. Outside the hall the Communists held a meeting in celebration of their success. This appeared to be attended by a number of people who were unable to get into the hall.

Mr. GALLACHER (Fife, W., Comm.).—Is it not the case that its flop arose from the campaign made in and around London, and in this House, against anybody participating in the meeting?

Mr. EDE.—I believe that but for the agitation and the paper which was circulated, obviously not by the promoters of the meeting, it would have been an even greater flop than it was. (Cheers.)

EFFECTIVE ACTION

Mr. SKEFFINGTON-LODGE (Bedford, Lab.).—Is my right hon. friend aware that his debunking effort this afternoon is one of the best ways of dealing with every one who tries to over-preen his own feathers? (Cheers.)

Mr. DRIBERG (Maldon, Lab.).—While thanking my right hon. friend for the very good entertainment he has provided for the House, we can take it that the obviously ridiculous character of this organization will not cause him to relax his vigilance against more serious elements which may, or may not, be associated with it. Will he also remember that before the war a number of people laughed at Mosley and Ramsay, whose activities were responsible for the deaths of quite a number of our fellow citizens?

Mr. EDE.—As I have suggested to the House before, what we require to do in this matter is to keep a sense of proportion, and to leave these people to the sense of humour of the British people. (Cheers.) We shall not cure Fascism in this country by turning the Home Secretary into a Fascist with powers to suppress opinion. (Cheers.)

Mr. ORBACH (Willesden, E., Lab.).—Has my right hon. friend's attention been called to the literature issued by this body, in particular to a document entitled "An Open Letter to the Jewish People," which is one of the most virulent anti-Semitic documents I have ever seen?

Mr. EDE.—That is being considered by the appropriate people, and on which I am taking advice. But I urge hon. members in all quarters of the House not to over-advertise these people, whose numbers are as contemptible as their opinions. (Cheers.)

Mr. PIRATIN (Mile End, Comm.) said many were concerned about the backers of the organization, and where Mr. Preen was able to get the money with which to pay for the Albert Hall.

Mr. EDE.—I would like to know where the money for a good many parties comes from.

To be held 12/11/40

E. G. Hamm, Esq.,
c/o Post Office,
Port Stanley
Falkland Isles

From:
Mrs. Phillips, 44 Annesh Grove, Stanmore, Mx.

44 Anmersh Grove,
Stanmore,
Mx.

17th May 1940

Dear Mrs. Warren,

Sorry not to have written before but what with one thing and another time has flown so quickly.

We are all getting along somehow you know; quite a number have been called up & some have lost their jobs, including Major who was sacked primarily because he was a conchie & Stokes who also intimated that he was going to be a conchie, Wallis of course is still out of work & kicking around, & about 20 of the other fellows have been called up & are in all sorts of things. We have got quite a lot of new members & the place is as full as ever, thank goodness.

I am afraid you will not be

getting "Action"; it is not now possible to send it out of the country - the members in the forces who have been having it sent to them will also be disappointed. We have something else now though called "Action News Service" which comes out each week & we are having this sent to you each week, if possible. It only came out three weeks ago & I will ask Harry to get the back numbers for you.

Well, Winnie the Pooh is P.M. at last, I don't know how or what news you get, but it was obvious he was making for that position some weeks before it actually came off.

We have had some good meetings in Harrow the last few weeks, last week was a bit noisy & Shepherd was speaking. Tomorrow we have A.J. Thomas coming down - after the events of this week we are hoping he will not be chucked off the platform. Things are certainly getting lively for us now & I am afraid some of our members may get faint hearts, anyway we shall soon see.

The leaders has had some really wonderful meetings. There was a big one in East End on May Day

& the crowds were absolutely tremendous.

I will see what books etc can be sent to you. This beautiful "freedom" of ours says we may not send some of our literature away anywhere (& I get it in time I will include some with this letter if not it will be posted as soon as possible).

Well, after all this talk what about yourself. Do let us know how you are going on & how you like your job. Hope there are not too many sheep for you over there.

Harry keeps intending to write to you but you know what a memory he has.

Cheerio for now & please excuse writing I am doing this in the train & it is a bit rocky.

Yours in Union

Daihnoslaf!

Margaret Phillips

ACTION NEWS SERVICE

A WEEKLY NEWS-LETTER AND NEWS NOTES
published by Sanctuary Press, Ltd., 16 Great Smith Street, Westminster.
Edited by A. RAVEN THOMSON.

30th April, 1940

Dear Fellow Briton,

THE Letters which I contribute to **Action News Service** will, usually, be topical comments on current events. But, on this first occasion, it is perhaps necessary for me to define again our policy in relation to the immediate problems of Peace and War.

To most members of **Action News Service** our general policy will be familiar. It was expressed in such books as "Tomorrow We Live" and remains not only unchanged, but fortified by events which have taken place since the war. My present definition, therefore, will be directed to our attitude upon the specific problems of the present time.

Our attitude is two-fold: (1) We want Peace and will do our utmost to persuade the British people to make Peace; (2) We want to make Peace with British Empire intact, our people safe, and the forces of Britain strong and undefeated. Therefore, on the one hand we urge the people to make Peace; on the other hand we relentlessly criticise any incompetence in the conduct of the war which may jeopardise the life of Britain or our Empire. **In fact, we want Peace not through defeat, but through strength. We want Peace not because the British people have to make Peace, but because the British people desire to make Peace.** If those principles are grasped our attitude towards this war will be clearly understood."

MIND BRITAIN'S BUSINESS

Happily, the same principles which we believe can secure a just Peace are also able, in our belief, to secure the present and future safety of our country. British Union's Peace terms rest upon a policy and faith which have been unchanged throughout the Movement's seven years of existence. Our popular slogans, "Mind Britain's Business" and "Britons Fight for Britain Only" are based upon our whole policy and philosophy of life. We believe that the mission of the British is to hold and to develop that quarter of the globe which was won by the heroism of their fathers. We further hold that the instruments of modern science can enable us to build within that heritage the highest civilisation that the world has yet known. We, therefore, denounce as a criminal folly any distraction from this task for alien purposes and any dissipation of our productive resources which weakens and exhausts the Empire that should provide for our people the fine life now made possible by modern industrial science.

DESIRABLE AND POSSIBLE

Furthermore, by a happy conjunction that is rare in human affairs, it appears that what is desirable coincides almost exactly with what is possible. It is desirable to concentrate upon the welfare of our own people and the development of our own Empire; in addition, this is all that is possible in present conditions. For that same science which has given to British Empire an almost unlimited potential of wealth if it is devoted to the tasks of Peace, has also made it impossible for us to interfere effectively in other people's business. Modern science on the one hand has given to nations a vast capacity for internal development, provided that they have access to adequate raw materials; on the other hand, it has also given to the defence of their security a great weapon power which makes both hopeless and fatal the task of the external assailant.

Long before the present war the best military opinion of the world was describing in some detail the enormous development in defensive power. Where in the last war we faced barbed wire, we now face concrete and every form of mechanical device; while the weapon power of the defence is multiplied many times. Therefore, we have to face the simple and ineluctable fact that a frontal attack upon the modern fortified positions of any great nation can only be pressed home with such crushing losses to the offensive that he who launches the attack is liable quickly to lose the war. These considerations were widely known and discussed before the war; since the war they have been transmuted by experience of this conflict into proved facts.

It is in the light, therefore, of facts which are now established that we can

review the conflicting policies of British Union and the old parties of the State.

Our policy rested upon a fact; their policy rested upon an illusion. This statement is now not difficult to substantiate. If the overwhelming power of the defensive be now proved, it must be admitted that it is possible for us to defend British Empire, but not to intervene effectively upon the Continent of Europe. Consequently the policy of Minding Britain's Business becomes not only desirable, but an absolute necessity. On the other hand, what are we to make of giving guarantees to such countries as Poland, in view of the fact that the main defensive positions of Germany lay between us and any possibility of coming effectively to their succour? In private life it is regarded as a fraudulent process for a man to give a guarantee which he knows he cannot fulfill. Yet British Government, in the last few years, have been handing out such guarantees two a penny to anyone who happened, for the moment, to be the object of their roving compassion or interest.

HOPELESS RESISTANCE

As a result many small nations have been encouraged to a hopeless resistance instead of reaching a relatively reasonable settlement with their more powerful neighbours. For the power of modern weapons gives overwhelming force to the great nation which is organised for self-defence; but it also provides great nations with a crushing weapon power in operation against weaker and more backward nations who are not organised for self-defence by modern method. In fact, in the period when democratic ideology was doing its best to persuade the world that the voice of the most backward should have the same weight in the councils of mankind as the voice of the most advanced, the ruthless realism of scientific development supplied the great nations with a power in relation to the backward nations which history never before had witnessed. Whether we like it or not, recent scientific development leads to a natural order of the world which, in our view, is as practical and desirable as it is anathema to the exploded ideologies of the financial democratic world.

NATURAL LEADERS

Again, in the future of world civilisation, as in our own domestic affairs, we find much that is desirable coinciding with all that is possible. It is desirable that the strong and advanced nations should act as the natural leaders of the weak and the backward. In fact, the development of modern science has made this inevitable. If any order is to prevail in the world each great nation is bound in its own particular area of power and influence to play this leading part. Thus only can order be preserved or progress attained. The old jealousies between the great powers, which led to continual interference in each other's business, are in process of liquidation, not by the wisdom of many of their statesmen, but by the simple development of science which has rendered such interference a physical impossibility. The progress of this war to date has gone very far to opening the eyes even of the most purblind to this now established fact. Those who strove to solve every breakdown in the world by establishing bigger and better international committees will be shocked; the method of confronting every problem by increasing the height of the Tower of Babel has come to an end. On the other hand, we can begin to see the fashioning of a world organised in days to come on the best lines which we conceive for our own Empire. Those who believe, as we do, passionately in the maintenance and development of British Empire, will not dissent from the conception that our race within the Empire should act as the big brother and natural friend of the more backward races in leading them along the path of progress and development; in so doing we help them and we help ourselves.

EVER HIGHER STANDARDS

The technical genius of the British can open up their raw materials and undeveloped territories both for their benefit and for our advantage. Raising ourselves to ever higher standards of civilisation we should lift them with us; for our exertions within a fully organised Empire will increase the relative standard of life of all sections of the Empire towards the full achievement of the modern productive potential. It is perfectly true that this conception of British Empire is very far from present realisation. British Union has denounced the crimes of Financial Democracy within the Empire precisely because we most love the Empire and have the greatest vision of its ultimate possibilities; but few would deny that the right conception of British Empire is that our own British people should act as the natural leader within our quarter of the globe which comprises so many diverse races in such varying degrees of human development. It is certainly a task that will occupy all our time. No one in his senses would be so foolish as to suggest that we shall have much time for external enterprises. Certainly no one outside a mad house would try to rule the whole world; a quarter is enough for us. Therefore we have to contemplate the rest of the world either in a state of anarchy or organised on similar lines. Let each great nation act as the natural leader within its own normal sphere of power and influence. Is not that the natural and logical development from the hopeless confusion of the attempts of the last two decades to run the whole world by an international committee of politicians who were merely the mask behind which operated the real power of international finance?

OPPOSED CONCEPTIONS

Yet a world war is now being fought to prevent this natural development taking place and to impose in place of national systems an international system which must rest ultimately in the hands of the force that has practised its manipulation for a good many centuries—namely, international Jewish finance.

So we come to two sharply opposed conceptions. On the one hand the great national blocks with no cause for friction between them because they are the self-contained entities which I first envisaged in my book "The Greater Britain," published some seven years ago; on the other hand, a yet more complete internationalism emerging from the world war which, in our view, will finally establish over exhausted mankind the perpetual domination of the Jewish masters of world usury.

Therefore, in the natural fulfilment of that faith which we have held so strongly for the seven years of British Union's life, we urge Peace coupled with the maintenance and development of a strong British Empire. **The greatest disaster that we can conceive in the world is the overthrow and the destruction of British Empire. The next greatest disaster is the exhaustion of British Empire in protracted war.** Therefore we ask the British people to make Peace and to take every precaution to defend themselves against all such calamities. We are against all adventures which take Britons over long and precarious lines of communication to battlefields remote from home bases or home interests. We want a strong Navy, Air Force, and Army, but we want them to be strong upon the defensive positions which are the proper place to defend the British Empire, namely the frontiers of that Empire.

TERMS OF PEACE

To the Germans we would say: "We have no interest in what you call your 'living-room' in eastern Europe or in the Mandated Territories, for we have a quarter of the world already which will take us all our time to develop. If you will make Peace on those terms we will give you peace forthwith. If at any time you sought to interfere with our land or to destroy British Empire, then, on the frontiers of British Empire, we would meet you with the full defensive power of modern science and forever we would resist you." As against such a suicidal folly of western mankind we point towards the conception of each great Nation acting as the natural leader in its own natural sphere on the march to ever higher degrees of civilisation. Let the rivalry and the race between us in the future be confined to answering the great question—that modern science could make the greatest enterprise of all time—which of us can serve best the country and the people whom we love?

OSWALD MOSLEY

NEWS NOTES *by "Action" News Service*

WITHHOLDING OF NEWS

The *Manchester Guardian*, April 17, published the extraordinary statement that

"Lord Liverpool (in the House of Lords) complained of lack of news about the loss of H.M.S. Exmouth, a destroyer, six weeks ago. The B.B.C. told him that the Admiralty withheld information so as not to discourage the public.

This statement was so remarkable that *Action News Service* consulted the actual Hansard of the House of Lords Debate. Lord Liverpool stated:

"The whole question of withholding news has been going on for some time. Although I understand that the noble and learned Viscount on the Woolsack is going to answer, I do not expect him to give a definite reply to what I have to say, but I hope he will take note of it. We lost a destroyer about six weeks ago—H.M.S. Exmouth. The news came from the Admiralty at seven o'clock and also at eight o'clock in the morning, but it was not repeated again throughout the day. We heard no more about it. Unfortunately at that time the newspapers were handicapped, because trains were not running. It was the worst time of the winter, and a great many of the relatives heard nothing for sixty hours. I admit that parents did, by telegram. Since that day we have not heard anything about this destroyer. In my work in my own county I have come into contact with a number of people who have lost sons and who would be grateful for some knowledge as regards the loss of this ship. After a certain time, as I did not wish to bother the First Lord of the Admiralty—he has too much on his shoulders as it is—I wrote to the Admiralty, and the Private Secretary told me it was the fault of the B.B.C. I wrote to them, and they said the Admiralty had told them that this information was withheld so as not to discourage the public."

GERMANY AND RUMANIA

The extent to which the economic system of Rumania is tied to that of Germany is clearly an important factor in view of Rumania's great resources of oil. The Russian statement that she did not desire the return of Bessarabia by war, and the modification of the Hungarian attitude, followed the Hitler-Mussolini meeting on the Brenner and the subsequent meeting between Hungarian and Italian representatives. On the other side the ban on Iron Guard leaders appeared to be lifted in Rumania and Dr. Clodius, the German economic expert, returned to Bucharest.

Action pointed out at the time that all this indicated a closer tie-up between Germany and Rumania in return for German protection, directly, or indirectly, exerted to save Rumania from the immediate pressure of Russian and Hungarian claims. It appeared likely that, by direct representation to Moscow and by representation to Hungary through Italy, modifications of their attitude had been secured, and that in return Germany would get substantial economic concessions.

An agreement is reported now to have been reached to which reference was made in the *Daily Telegraph* on April 23. That paper appeared at first to take the view that Rumania had done very well and Germany very badly out of this agreement; for instance, it was stated: "The German demands for an increase in the lei-reichsmark exchange rate and for increased credits are refused." But it added: "Rumania obtains arms for oil," and, finally in conclusion, made the significant statement: "No official communication has as yet been made regarding the present agreement. Fantastic stories are current, for example, of a whole trainload of oil having to be delivered in exchange for one gun from the Skoda works."

It would not seem, therefore, to matter very much to Germany if she accepted the "rebuff" of an unfavourable exchange rate provided that she received such highly favourable terms in a direct barter transaction between arms and the oil which is the chief commodity which she requires from Rumania. It would be a very serious matter if Germany had received such very favourable terms as would make nonsense of the further wave of optimism on this subject released in much of the Press.

GARVIN CHANGES HIS MIND

As we go to press Mr. Garvin in the Sunday Observer presents a rather different picture of Norway from his article of the week before. On the subject of the fight for Dombaas he goes so far as to say :

"If the enemy could grasp it firmly two consequences would follow: First, the invaders would be doubly sure of relieving Trondheim from the south; Second, it would become difficult for the Allies to hold any effective footing in Norway for long."

BOMBAST

Mr. Churchill's famous utterance on the 11th April, 1940, in the House of Commons has now passed into history. But we do not have to await the comment of posterity! He stated: "All German ships in the Skaggerak and the Kattegat will be sunk . . ." on the evening of the 11th April.

In the *Daily Express* of the 23rd April we find a short comment upon this bombastic utterance:

"Stroemstad, Monday. — German minesweepers have been active in the Allied minefields in the Skaggerak, according to reports from islands near the west coast of Sweden. The mines are being carefully swept up, so that they can be used again."

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ACTION NEWS SERVICE

A WEEKLY NEWS-LETTER AND NEWS NOTES
Published by Sanctuary Press, Ltd., 16 Great Smith Street, Westminster.
Edited by A. RAVEN THOMSON.

7th May, 1940

Dear Fellow Briton,

Only one consolation can be found in the Norwegian scene to relieve the shadow upon all who love the British name. That consolation does not consist in having been proved right. This poor thought will never console us when the folly of the Parties plunges Britain into a tragedy in face of every warning from British Union. Our only consolation rests in the fact, now surely proved, that it will be possible for efficient Government in Britain to defend the coast line of these islands or of any part of the Empire at any time against any attack. It has been possible for the Germans to improvise such a defence from hastily seized air bases in face of the most formidable naval power in the world. How much easier then for us to organise such defence from long prepared air bases on the frontiers of Empire, and with the strongest naval force in the world not against us but on our side.

From this experience the power of the defender and the power of the air has emerged decisive. It is upon our belief in the power of the defence and our recognition of the newly developed power of the air that our policy and strategy for the defence of Britain against all comers has long been based. Therefore, in this dark scene let us realise that final proof is afforded of the ability of modern Government in Britain to defend the Empire against any foreign nation or any combination of powers.

DEFENCE OF BRITAIN

In the light of that experience just conceive the task of a German Government which desired to attack a properly defended Britain. Let them try to take their transports through a minefield stretching from the North of Scotland to the English Channel and defended by the British Navy; let them take their transports across that long sea route in the fact of bombers protected by fighters operationg from home bases which formed part of an Air Force that, under British Union, would be at least the equal of the German Air Force. Let them pass these three barriers to encounter our own madern defensive positions, built, if necessary, along the entire coast-line of Britain, and manned by a citizen army inspired by the spirit of Britain reborn. When we consider these possibilities in the light of the Norwegian experience, can any mind, even the most craven or the most moron, contend that it is impossible to defend Britain against the German power unless we wage our battles on the Continent with far flung foreign alliances?

Let anyone, too, regard the defence of Empire in the light of this Norwegian experience. I was asked the other day how we could defend Australia against Japan, and stated in reply that we could defend Australia against Japan by naval and air bases located on the coast of Australia, which would very easily deal with a Japanese invasion long before they landed on Australian coasts.

This view that modern air power, located on home bases, would be decisive, has been overwhelmingly reinforced by the Norwegian experience. Granted a strong Navy and a strong Air Force we could defend Britain and the Empire against any attack, provided that we rest this defence upon our own frontiers. The air is a decisive factor and operating as a defender from adjacent bases its power is now proved to be extraordinary.

MODERN AIR POWER

Let us, therefore, during a dark moment, give to many of our countrymen this message of hope. We of British Union have merely seen confirmed what we knew before. It is possible for Britain forever to defend her own Empire but not in present circumstances to intervene on the Continent of Europe. We could intervene effectively in Norway, if anywhere on the continent of Europe, because the long coast line of Norway presents a target for naval power. At the same time in recognition of the immense power of a modern Air Force, which could operate from nearer bases, I was against any Scandinavian adventure. This was my published view long before the Germans by their more rapid movement had seized the air bases of Norway. For a glance at the map would reveal that Germany could easily establish air bases which would command the southern part of Scandinavia by

reason of their greater proximity. Their sea route was short and relatively protected; their fighter planes could cover that sea route against attacks which our bombers could only deliver unprotected by fighters as the distance was too far. At the same time it was plain that British transports at many points in the North Sea might be attacked by bombers without any very effective protection for our ships from fighter aircraft. Because geography gave, even in the Scandinavian area, an immense advantage to the Germans in the air, British Union was opposed from the outset to any intervention in that part of the world and recorded that view in warnings long before the event.

We can only now enquire why such factors, which seemed so obvious, were not also apparent to the Government. Have these old men no realisation of the enormous power of the air in modern war? How else can we account for their action?

THE PARTIES

The simple fact is that the Norwegian adventure was foredoomed to failure by reason of the advantage of air power which rested with the other side. A chorus of criticism and abuse on detail is now arising from Parliamentary and Press critics who loudly applauded the adventure when it was launched. Let us set aside, for the moment, all detail and grasp the one essential fact. The decisive factor was the relative proximity of the air bases of the other side to the main theatre of operation. This was just as plain before the event as it is after the event. Yet the Parliamentary critics and Press critics praised an adventure which was foredoomed for that reason to failure, and now only part company with the Government on detailed issues which are irrelevant to the main fact. It is now agreed and admitted that the overwhelming air power which Germany developed in Scandinavia achieved the decision. That contingency should have been apparent to anyone who had studied at all the facts of modern air power. Therefore, the critics who agreed on the main principle of this foredoomed adventure cannot escape their responsibility by criticising the Government for detail. All parties and practically the whole of the Press are in it up to the neck.

SLOW MOVEMENT

When we come to the actual conduct of the campaign the slow action of the Government greatly enhanced their initial disadvantage. Our handicap in Scandinavia by reason of the closer German air bases existed in any case, but this set-back was greatly increased by the slow military action of the Allies and the rapid military action of Germany. Mr. Chamberlain's statement confirms the fact that a British military landing did not take place until a full week after Mr. Churchill's mine laying in Norwegian waters; and a longer period apparently elapsed before any landing in the southern area. Yet the German military landing took place within twenty-four hours; they thus had a six days' advantage. Their quicker action enabled them to increase their initial advantage in the air by seizing practically every air base in Norway. This rapid military movement completed their advantage. From that moment any effective military landing by the Allies in the south of Norway was foredoomed. We, therefore, enquire why it was undertaken.

FORCES DISPERSED

Further, we still await an effective answer to my question in **Action** of April 18 last, why a full week elapsed between the mine-laying and the first military action? Mr. Chamberlain's partial explanation in the House of Commons makes the matter the more extraordinary and the position of the Government the more culpable.

Quotations of previous statements by Churchill and Chamberlain, stating their fore-knowledge of the possibility of some military action by Germany against Scandinavia, or an adjoining country, were published in **Action** of last week. Mr. Chamberlain in his apology underlined this admission. He stated in the House of Commons on Thursday, May 2:

> **"We had been aware for many months that the Germans were accumulating transports and troops in Baltic ports and that these troops were constantly being practised in embarcation and disembarcation. It was evident that some act of aggression was in contemplation . . ."**

But in the very same speech he stated with reference to the force accumulated for intervention in Finland:

> **"After a certain period the greater part of the forces which had been accumulated were dispersed since both they and the ships which were allocated for their transport were wanted elsewhere."**

REMARKABLE ANSWER

He, therefore, answered in a truly remarkable fashion **Action's** question of last week why the force which he had boasted was ready to intervene in Finland was not ready to intervene in Norway, with the result that the Germans got a clear six days' start. He now states, apparently, that this force was dispersed, although he knew that the Germans were practising "embarcation and disembarcation," with a force that was "equally available for attack upon Finland, Sweden, Norway, Holland, or this country . . ." What an extraordinary moment, in the light of that knowledge, to disperse such a force! If he had knowledge that the Germans were contemplating any such coup in any such direction was it not his elementary duty not to disperse such forces as were available to meet them, but to redouble his efforts to accumulate such forces?—that is, if he thought it his duty to intervene wherever Germany struck on the Continent, which he seems to have done.

INSANE

My view is well-known and was long ago stated that we should indulge in no such adventure, but should concentrate on the defence of British Empire on the frontiers of that Empire. But Mr. Chamberlain's view was exactly the opposite. The Government thought we should seize any opportunities to combat the German power anywhere. In fact, the Norwegian expedition was an attempt to implement this policy. Why, then, did they not prepare for it? Why, having prepared for a Scandinavian adventure, did they go so far as to disperse their preparations when both Chamberlain and Churchill tell us that they had precise knowledge of an impending German blow? **Originally the Government appeared merely inept, but after their explanation they appear insane.**

FOREDOOMED FROM THE OUTSET

In summary it now appears beyond question that the incompetence of Government enhanced our original disadvantage in Norway. The Government must bear exclusive responsibility for this particular muddle; but apart from their conduct of the actual operation the whole venture was fore-doomed from the outset for reasons which are now proved. Those reasons are that the power of the defender in modern war is irresistible if properly organised and that a power operating even in foreign territory which is nearer to its own air bases than that of its opponent, has an overwhelming advantage. The Germans could use short range fighters to protect their communications from bombers and we could not. So decisive was this factor that the Prime Minister had to admit in the House of Commons that it was not even possible for us to land the necessary tanks or artillery in face of air power. Therefore, while the Government must shoulder responsibility for the particular muddle arising from their dispersal of available forces and their delayed military action, all parties and the whole Press, which supported the venture, must equally bear responsibility for launching British troops into a theatre of war where they had no fair chance for reasons which were plain in advance. These reasons were obvious to anyone who had studied at all the development of air power. After the lessons of the Polish campaign, as reported in the Press of the whole world, no excuse existed for ignoring this immense new factor in modern warfare. Therefore, in the particular muddle of their special incompetence the Government is to blame; but all Parties and most of the Press stand condemned for the criminal folly of sending British troops under such conditions to such an enterprise.

A DECISIVE LESSON

British Union asks them now this question: If you cannot now intervene effectively even in Norway against German power operating on interior lines, what chance have you of intervening effectively anywhere else on the Continent of Europe?

We may be thankful that this campaign does not present the British Empire with a decisive disaster; but it does present a decisive lesson. The very same power of modern defensive force which prevents us intervening effectively on the Continent, even in Norway will, *a fortiori*, prevent Germany intervening effectively, if she so desired, against an effectively organised British Empire. Again I repeat that the whale cannot fight the elephant in its own sphere, but with even greater force I urge that the elephant cannot fight the whale in another sphere.

We cannot easily break German power in Europe. The Germans can never break British power in our far flung Empire, if Britain be modern in system and be inspired again by her own brave spirit. Why, therefore, exhaust the world in a meaningless struggle of these giants of different elements? At its best it is a folly: when we contemplate some of the factors promoting this conflict it becomes the blackest crime in history.

OSWALD MOSLEY, 3.5.40.

NEW NOTES by 'Action' News Service (Sunday, 5.5.40)

LLOYD GEORGE

Will they say he is "Fifth Column" now? On the "Democratic" Cause, he writes:

"Their leaders have utterly muddled their case, and it will certainly be lost, **if there is no immediate change in direction.**"

He refers also to : "This crazy guarantee to Poland" and remarks that "Italy chortles over German triumphs and prepares to join in the sharing of the spoils."

He speaks of invading the "territorial waters of Norway despite Norwegian protest," and adds: "We ought to have anticipated a swift counter stroke from Germany. When it came we were utterly unprepared to parry it."

Later he states of the Norwegian expedition: "It is a deplorable tale of incompetence and stupidity."

He winds up his indictment as follows:

"There can be no doubt as to the extreme gravity of the situation. The Cabinet have failed conspicuously in their efforts to grapple with it. It is now for the British Parliament to take it in hand immediately. If they fail to do so without delay they will be guilty of high treason to the nation."

British Union must agree with much of this in so far as *Lloyd George* merely says to-day what we said yesterday. But what about the **Sunday Pictorial,** which prints this article with the comment: "There are some who will disagree" because it believes in free speech!!!

RUMANIA

The possibility of an Italian and Spanish intervention in the war is of acute interest, in view of the position of the British army in the Near East which has been so much publicised in the Press.

A statement by the B.B.C., astonishing in the present delicate situation, was published in the *Daily Telegraph* of May 3. According to the *Daily Telegraph*:

"An urgent appeal to Rumania not to delay a request for Allied aid was made by the B.B.C. in its Rumanian bulletin broadcast last night. 'In Palestine, in Syria and in Egypt are massing great armies of England and France,' said the announcer. 'Hitler understands nothing but force, and the Allies have enough force in the Near East to smash utterly any Balkan adventure Hitler may undertake.'"

This appears to be an amazing indiscretion on two grounds: (1) The Government is evidently concerned to keep Italy out of the war and statements like that about the Balkans seem to be merely coat-trailing in front of Italy. (2) The same day that the Prime Minister was compelled to explain in the House of Commons how our Government had failed to protect Norway was scarcely the occasion to select for encouraging another small power to launch into the adventure of their protection.

In fact, a singular piece of ineptitude, even for the B.B.C.

ITALY

Rumour and counter-rumour circulate concerning Italy. Mosley's statement in *Action*, April 25, still holds: **"The probability is that both Italy and Spain will enter the war when it suits them, and that they will enter the war on the other side."**

A tremendous Press campaign against the Allies appeared recently to be reaching its culmination, but at the moment indications exist of some pause.

It is just possible that before coming in ***Mussolini may make another Peace effort.*** This possibility is lent some colour by his interviews of May 1 with Mr. Phillips, the American Ambassador. If he makes any such last move we can only urge our Government to consider long and earnestly before lightly rejecting it, with the probable result that war will blaze throughout the Mediterranean and the Near East.

Even the threat of such a possibility does not improve our position when an extra strain has to be thrown on merchant tonnage by the longer journey round the Cape route—which decision is published in the Press as having been taken by the Government.

INDEX

It will be noted that the pages of this issue are numbered 5 to 8. All future issues will be numbered consecutively for the purpose of forming an index.

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ACTION NEWS SERVICE

A WEEKLY NEWS-LETTER AND NEWS NOTES

Published by Sanctuary Press, Ltd., 16 Great Smith Street, Westminster.

Edited by A. RAVEN THOMSON.

14th May, 1940

It is too soon to comment as we go to Press upon events in Belgium and in Holland beyond stating the following facts:

(1) Instructions, as follows, are being circulated to all Districts of British Union.

In this grave hour for our country every member is reminded of the Leader's instructions. It is unnecessary to ask every Briton in British Union to obey them in letter and spirit.

(i) The following passage in his message of September 1, 1939: "Our country is involved in war. Therefore I ask you to do nothing to injure our country, or to help any other Power. Our members should do what the law requires of them, and, if they are members of any of the Forces or Services of the Crown, they should obey their orders, and, in every particular, obey the rules of their Service."

(ii) The following passages from his speech on April 26, reported in *Action*, No. 217: "On the one hand British Union wanted Peace; on the other hand they wanted Peace with Britain undefeated. . . . They wanted Peace, but they wanted Peace with British Empire intact, our people safe, and our Army, Navy and Air Force undefeated in the field."

(2) In Action on April 25 Mosley stated that the Germans might "take risks to advance their air bases nearer to Britain in Holland." He continued: "It would appear that considerations of the neutrality of small powers, for all practical purposes, have now vanished from this war."

Previously, on January 25, he had stated the Germans might make a move for the purpose of "improving the position of their air bases."

Beyond these two statements we think it our duty to confine the News Notes and News Letter at this moment to comments upon the Parliamentary Debate on the Scandinavian campaign, and the agricultural position, which had already been written and sent to press.

NOTE OF THE WEEK

THE stampede in Parliament raises one direct question: Which of the members who now shift all blame on to the Old Gang in the Cabinet expressed any dissent from their policy until it had failed?

Two basic facts governed the Norwegian situation which Mosley stated in advance: (1) By reason of geography it was always easier for the Germans to establish air bases commanding the most vital areas of Scandinavia than for us to establish such bases; (2) The moment their more rapid military action enabled them to seize practically all existing bases in Scandinavia, counter-action by Britain became almost impossible because their bombers were protected by fighters and our bombers could not be so protected. From these facts arose the inevitable German air superiority in that campaign.

So we enquire which members of Parliament, who now denounce the Government, either foresaw the initial German advantage in the air in any Scandinavian campaign, or the greater advantage arising from the rapidity of the German action which made inevitable the failure of our belated counter-attack which Parliament united to applaud?

The following extracts from the speeches of the Air Minister and Churchill illustrate our point with overwhelming force. Churchill tried to explain the situation by saying:

"The reason for this serious disadvantage of our not having the initiative, is one which cannot speedily be removed, and it is our failure in the last five years to maintain, or re-gain, air parity in numbers with Germany.

"That is an old story; and it is a long story—a very long story."

(*Hansard*, May 8, col. 1351).

Any reader of last week's *Action* will possibly be more familiar with that old story than Mr. Churchill would now appear to be. But it is plain from the Air Minister's admissions in the Debate that even with air parity the intervention in Scandinavia was a mad venture in the circumstances.

Sir Samuel Hoare was asked in the course of the Debate:

"Whether re-duplicating, multiplying by twenty times, the number of fighters—Hurricanes and Spitfires—would have made any difference whatsoever to the campaign in Norway?" (*Hansard*, col. 1277).

The Air Minister replied:

"My answer would be No, not without air bases in Norway. The whole basis of my argument has been that without those air bases we have been suffering under an almost overwhelming handicap during the last few weeks."

In other words, his admission supports Mosley's consistent contention that the defender with such adjacent bases that he could use his fighters has an overwhelming advantage in modern air war.

Therefore, as Germany, by reason of geography, would always find it easier to establish bases in closer proximity to Scandinavia, intervention by Britain in that region was a folly. This initial advantage was, of course, increased by the German military action following our mine-laying within twenty-four hours and our first military intervention being delayed for another six days. The immense effect of this disadvantage was clearly admitted in the speech of Mr. Churchill, who had always been an extreme theorist of Naval power in combating Air Power. He stated:

"Our present naval preponderance, it is said, ought to make it feasible for us to dominate the Skagerrak with our surface ships and thus cut the communications with Oslo from the first moment and continuously. But the immense enemy air strength which can be brought to bear upon our patrolling craft has made this method far too costly to be adopted." (*Hansard*, col. 1352).

So Churchill at last admits the danger of the air.

Referring to the possibility of "a direct landing in Trondheim fiord" (*Hansard*, col. 1355), he said:

"The forts at the entrance presented no serious difficulty, and the guns were not of a very formidable character, but the fact that a very large number of valuable ships would have to be continuously exposed for many hours to close bombing mean that grievous losses might be sustained."

He stated later in regard to the same enterprise that although

"The Admiralty never withdrew their offer or considered the operation impracticable in the naval aspect. Grave doubts were, however, entertained by the military as to the possibility of making an opposed landing under heavy hostile air superiority."

(*Hansard*, col. 1356).

He followed this passage up by saying:

"I take the fullest responsibility—and so do the Prime Minister and the other Ministers concerned—for having accepted the unanimous view of our expert advisers."

A further passage in his speech throws a light on the natural advantage of Germany in a Scandinavian struggle to which Mosley had made strong reference in condemning all Scandinavian adventures in advance. Referring to the possibility of building up a front on a line south of Trondheim, Churchill said:

"I do not believe that it would have been able to withstand the immense weight of the attack which was being delivered by the Germans from their magnificent base at Oslo and up the two lines of railway and road from Oslo to the North. There could be no doubt whatever that the German base at Oslo and the German communications northward were incomparably superior to anything that we could have obtained at Trondheim and at the various small ancillary landing places which we used." (*Hansard*, col. 1358).

Why then did the Government go into Scandinavia, knowing not only that the Germans began by being much more accessible to this "magnificent base" than we were, but also that they had already seized it?

He concluded this passage by saying:

"There was no means by which their air superiority could have been overcome. We should therefore have been committed to a forlorn operation on an ever-increasing scale."

Surely the only possible comment upon all this is: (1) Why did they ever dream of a Scandinavian adventure when the Germans had such a natural advantage? (2) Why did they risk the prestige of Britain by their mine-laying when the Germans could so easily and successfully counter their attack? (3) Above all, why did they rush into the adventure when all hopes of success were doomed by their not being ready to follow up their naval action with military action, with the result that the Germans first seized every vantage point in Norway for the development of the air superiority which proved so decisive?

Muddled in mind and tardy in action the whole of the present Government stands condemned. Equally condemned are the Parliamentarians who covered them with sycophantic applause until their failure was patent to the whole world.

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"ACTION" NEWS LETTER

Dear Fellow Briton,

THE cutting-off of food supplies from Scandinavia is a sharp reminder of the precarious nature of the situation into which we are drifting. It is a situation which can be mastered only by clear thinking and energetic action, neither of which qualities can yet be discerned in official policy.

Ever since its foundation British Union has worked hard for revival and expansion of British agriculture. This was essentially a long-term policy, designed to repair the ravages of Export Capitalism by restoring the natural balance between Industry and Agriculture. It sought not only to make full use of our incomparable countryside as a source of food and a nursery of our race, but to make good the loss of markets arising from the inevitable decline of foreign trade.

The essential wisdom of that policy has now been thrown into sharp relief by the serious threat to our food supplies and the utter inadequacy of the Government's preparations to meet it. For a fully productive agriculture is not only a source of wealth and employment in time of peace, it is an insurance against the menace of hunger blockade in time of war.

Yet while ships are at a premium and foreign exchange is dwindling, farming is still waiting for the leadership, the assistance and the organisation which will enable it to produce to capacity and thus render unnecessary those perilous voyages and that ill-afforded expense.

WHY NOTHING WAS DONE

Many intelligent persons have asked why, if the restoration of agriculture was so obviously in the national interest, so little was done about it. The official answer, to which the politicians of all parties, every orthodox economist, and 90 per cent. of the Press, have subscribed, is that Britain is a small island devoted to manufacturing and foreign trade. Not only is it impossible to feed ourselves, but it would be disastrous even to attempt to do so.

Now what is this but a confession that the Financial Democratic system is so inefficient or so corrupt that one half of our economic structure (Agriculture) has to be sacrificed in order to allow the other half (Industry) to function at all?

For surely, if Britain is a small densely-populated island, that is all the more reason why we should make the fullest possible use of what land we have; while the economy of Holland and Belgium, or for that matter Germany, demonstrates that there is no real incompatibility between intensive industrialisation and intensive agriculture.

The trade-ruination theory (a favourite Chamberlain gambit) is likewise demolished by reference to facts; for our trade figures show that during the nine years (1930-38) prior to the war our visible imports exceeded our visible exports by no less than £300,000,000. In other words, we could have replaced foreign foodstuffs wholly by home produce (British Union policy), and still have left other countries ample means to make their purchases from us.

The plain truth of the matter was (and still is) that big imports and cheap food are vital to the Financial Democratic system. The former are the media in which interest on foreign loans is collected, the grist passing through the mills of the City of London. The latter serves equally well as a political bribe and an economic sop.

NATION OR SYSTEM

We are thus confronted with a truly devastating conflict of interests, a grisly paradox which should give every patriotic Briton furiously to think.

On the one hand we have the Nation, which literally cannot afford to neglect agriculture for another day; on the other we have the System, which literally cannot afford to restore agriculture to its natural function.

The extent of this conflict could clearly be traced in the tedious mass of legislation with which the "National" Government sought to appease the very general demand for an agricultural policy before the war. To almost every Act, no matter whether it provided a petty subsidy or set up a grandiose marketing scheme, were attached conditions which effectively checked any increase in production.

That conflict is still going on. No matter how many ships are sunk, no matter how precarious the exchange position becomes, no matter how many trade routes are cut or threatened, the Government can always find something better to do with our man-power and money than use it for growing food at home. Indeed agriculture, instead of expanding to fill the gaps in our supply created by the war, is having considerable difficulty in carrying on at all.

FACING FACTS

What, then, **can** be done? What could a British Union government do that is not already being done?

I would suggest in all seriousness that the first thing to do is to face certain facts. These are briefly:

(i) This war, which is essentially a war of blockade and economic exhaustion, represents a very real threat to our customary sources of food.

(ii) Unless we take immediate steps to counter this threat by the intensive development of home production, our chances of safety are seriously diminished.

(iii) As the war proceeds and our external purchasing power is used up, the possibility of reverting to the cheap imported food policy after hostilities are over becomes remote.

(iv) The necessary intensification of home production cannot be achieved without great and sustained effort.

These four facts taken in conjunction point inescapably to the paramount need for a thoroughgoing long-term policy, and make the present emergency policy of short-term exploitation look not only futile, but positively dangerous. There is indeed a distinct danger that the contraction of our capacity to import may coincide with the final collapse of our own agriculture.

Before the land can save us from the wreck of a bankrupt system, the land itself must be built up—in precisely the same way that an army or an industry must be built up—to meet national needs. Men must be brought back to the land, and given every encouragement to stay there. Money must be brought back, and used to repair the damage wrought by past exploitation and neglect. Above all, the soil itself must be regenerated, and raised to the high state of productivity of which we know it to be capable under modern conditions.

FOUR POINT POLICY

The first step in actual policy is to decide what foodstuffs are most necessary, taking into account the requirements both of a balanced national diet and a balanced farm economy. The second is to lay down a scale of minimum prices and wages which will give justice both to efficient management and efficient labour. The third is to ensure that the necessary labour, materials and machinery are available, and that farmers have the credits wherewith to obtain them. The fourth is to create an organisation of all engaged in the food industry, to stimulate production, facilitate distribution and eliminate waste.

These steps will at last give agriculturalists the opportunity to set in hand a task which they know to be essential for the security of the country. But they cannot by themselves meet the case of land which requires not intensification, but reclamation. This land, probably not much less than 15,000,000 acres, is in most instances beyond the capacity of private enterprise to reclaim within the strictly limited time at our disposal; and in a few cases there may be deliberate obstruction.

Therefore, because the life of the State is at stake, the State itself must undertake the restoration of these lost acres to productivity. Much of this land was farmed once; and practically the whole of it can be made by the application of human energy and modern science to contribute to the national larder.

It must be clearly understood that this is not just a case of ploughing up turf and putting in a crop. There is an immense amount of preparatory work to be done—clearing, draining, cultivation, manuring, fencing, and even road-making and building. For this task and for the provision of a labour reserve for agriculture as a whole, at least 500,000 able-bodied men will be required, and probably some £150,000,000 of capital.

WHICH SHALL COME FIRST?

Can we afford to do it? Can we afford to divert men, money and materials on such a scale from the so-called war effort? Supporters and advisers of the Government clearly show by their attitude that they do not think so.

We must therefore put to them the counter-question. Can we afford **not** to do it? Can we afford to risk the lives of our own people in order to pile up still more instruments of slaughter against our opponents? Dare we expose our crowded cities and industrial areas to the menace of hunger and all that it would mean?

And again. Is it really easier to import raw materials, manufacture them, find a market, export the goods, and then import food, than to grow that food here at home without any need for three hazardous voyages and half a dozen complex transactions? Is it really possible for us to hold our own against one of the best organised nations in the world while one of our most important assets remains half-used?

Those who answer these counter-questions in the affirmative—and almost the whole of the old parties will do so—are clearly putting System before Nation, for it cannot conceivably be against the interests of a blockaded nation to grow the maximum quantity of food within its own borders. **Can we escape the conclusion that in their desperate efforts to save the System they will risk the very existence of the Nation?**

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